



May 15, 2023

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg.
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: Docket ID ED-2022-OCR-0143, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams

Via [regulations.gov](https://www.regulations.gov)

Ladies and Gentlemen:

Founded in 2021, Citizens Defending Freedom is a non-profit organization that strategically employs county-level chapters across America to help citizens defend their faith and freedom, all while fighting for transparency in local government. Our mission is to resolve breaches of liberty through local awareness, local light, and local action as we focus our efforts locally on public and private organizations. This is to ensure compliance with the principles of freedom and liberty, which are endowed by our Creator and guaranteed by America's founding documents.

Consistent with this purpose, we write today in passionate opposition to the Office for Civil Rights' Notice of Proposed Rulemaking to unconstitutionally amend Title IX and thereby weaken the protections afforded to women and girls under the current language of the law. Quoting its decision in *Davis v. Mich. Dept. of the Treasury*, 489 U.S. 803, 809 (1989), the Supreme Court in its recent *West Virginia v. EPA* decision (2022) observed that "it is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." For this reason, officials are obligated to recognize the statutory intent of Title IX as it is understood in the original context in which it was drafted. As such, this legal precedent requires adherence to the definition of the word "sex" as it was understood to be biological and binary as it was when Title IX was passed in 1972. This would preclude any interpretations seeking to amend this understanding to include sexual orientation or gender identity. This is because when Title IX was passed by Congress in 1972, the term "sex" referred to binary, biological sex (male or female) because it was the only ordinary public meaning of "sex" at the time of Title IX's enactment. As such, Title IX says and should continue to say nothing about sexual orientation and gender identity.

As an organization that seeks to bring our elected officials back in compliance with America's founding principles and values, Citizens Defending Freedom believes that it is this understanding of "sex" which must still be upheld today in order to safeguard the privacy, equality, and safety of women and girls. Thus, while Title IX's current sex-specific protections have worked to ensure that female students do not

suffer a systematic disadvantage in school athletics, under the Department's proposed changes, women and girls would now unjustly be forced to compete against biological males identifying as women in sports competitions.

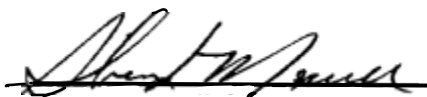
Moreover, in prohibiting schools and colleges that receive federal funding from banning biological males from participating on women and girls' sports teams, the proposed regulation would reinforce a prevalent though severely flawed interpretation of the Supreme Court's decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), an employment law case that concerned Title VII, not Title IX. In fact, the Court in *Bostock* expressly declined to comment on Title IX and thus, did not broaden the definition of "sex" to include gender identity (*Bostock* 140 S. Ct. at 1753).

Additionally, the *Bostock* court also acknowledged that assuming applications of Title VII to Title IX "would risk amending the statutes outside the legislative process reserved for the people's representatives." (140 S. Ct. at 1738). Under the U.S. Constitution, it is unlawful to implement a sweeping expansion of federal law without congressional approval. As such, altering the definition of "sex" under Title IX to include gender identity and sexual orientation is a decision solely reserved to Congress. In June 2022, the U.S. Supreme Court in *West Virginia v. EPA* (142 S.Ct. 2587) affirmed this, finding that a federal agency may not implement sweeping expansions of regulatory authority without clear congressional authorization. Thus, the NPRM is ripe for ideology-driven administrative abuse, exceeding enumerated federal powers under the Constitution and violating the distribution of power between Congress and the Executive branch.

Finally, as the NPRM currently provides notice that the proposed regulation may have federalism implications (with "federalism implications" meaning anything that has substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government), we as an organization are obligated to reject any lawmaking that seeks to undermine the Separation of Powers, a bedrock of our Constitutional Republic. As stated by Founding Father James Madison, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny" (*The Federalist Papers*, No.47). A truly unprecedented act by a federal agency to expand its own regulatory authority, this proposed rule problematically favors National Government control over State and local public school athletic participation based on the dangerously malleable, purposefully indefinable, and relativistically unfixed category of gender identity, something which will have a substantial, direct, and grave effect on every public school and college in the United States for years to come should the NRPM come into effect.

Therefore, as we are confident this overreach of regulatory authority will have devastating federalism implications on local and State governance of public education systems, including the equality, competitiveness, and the safety of women and girls' athletics, Citizens Defending Freedom hereby submits this letter to constitute our unequivocal rejection of this radical attempt to alter the definition of biological "sex" under Title IX to include gender identity and sexual orientation.

Respectfully signed,



Steve Maxwell
Co-Founder and Chairman



Jonathan Hullman
Deputy General Counsel