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U.S. Department of Health and Human Services
Office for Civil Rights
Attention: 1557 NPRM (RIN 0945-AA17)
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW, Washington, DC 20201

October 3, 2022

Secretary Becerra:

As legislators entrusted by our constituents to act according to the oaths we have respectively taken to uphold our oaths to both the U.S. and Texas Constitutions, we write today to notify you of our opposition to Proposed Rule 87 FR 47824, which seeks to force hospitals across the United States to perform genital mutilation procedures on both adults and children as well as substantially weakening conscience protections for physicians and other healthcare workers who wish to abstain from performing or participating in abortion procedures.

The clear moral problems associated with abortion and genital mutilation, both of which are serious concerns for our Caucus and the wider Texas Legislature generally, are paramount in this proposed rule. The rule removes conscience protections for healthcare workers wishing to abstain from these horrific procedures and replaces them with penalties associated with Civil Rights violations usually reserved for discriminatory acts related to, for example, refusing to provide medical care for someone based on their race or gender. These sickening procedures are clearly not what the Civil Rights Act of 1964 was written to protect, and it is the height of disingenuousness to assert otherwise, as the rule does.

The proposed rule, for example, under § 92.207 (b) (4), prohibits covered entities under the Affordable Care Act from "[having] or [implementing] a categorical coverage exclusion or limitation for all health services related to gender transition or other gender-affirming care . . . ." As we have learned over the last few years, these phrases are code words for the exact type of genital mutilation we have referenced in this letter.

Worse, the proposed rule provides no age limit to the requirement that healthcare providers perform these types of mutilatory acts—meaning that children will be caught and made to suffer. Even if one accepts that gender dysphoria exists as prolifically as reported among young children, advocates for these reprehensible acts themselves admit that nearly 100% of children that experience this problem will eventually grow out of it naturally.[1] Aside from the obvious permanent physical downsides to the mutilation of any healthy body part, exposing children to irreversible and harmful hormones can also, for example, leave young females with deepened voices for the rest of their lives,[2] and puts children at risk for breast, cervical, ovarian or uterine cancer, cardiovascular disease, hypertension, type 2 diabetes, gallstones, elevated liver enzymes, and decreased bone density.[3] This prolific list of harmful and irreversible side effects is no surprise to our Caucus, and any child with a basic understanding of human nature could tell you the same.

Although it is not as clear, the proposed rule also seems to limit protections against healthcare workers who wish to abstain from procedures related to abortions—or, as we see it, the unjustified killing of an innocent human being in the womb—by removing a provision that imposes a neutral view on the subject of abortion. The implications, then, of the rule, are not only the required mutilation of children and adults by physicians who are morally and religiously opposed to these practices, but the murdering of the most innocent among us as well. This rule will upend decades of federal recognition of these moral and religious objections and will have consequences that reach far beyond the issues at hand. Certainly, the rule falls far from the "moral and religious" society John Adams spoke of when he described the type of people for which the U.S. Constitution was written.

The proposed rule relies heavily on the U.S. Supreme Court's decision in *Bostock v. Clayton County*.[4] In Justice Alito's dissent in that decision, he writes that "[t]here is only one word for what the Court has done today: legislation."[5] He points out that the U.S. Congress has tried—and failed—to pass legislation amending to add "sexual orientation" and "gender identity" to the list of protected classes listed in Title VII the Civil Rights Act of 1964.[6] *Bostock*, he says, eliminates Congress's role in that legislation, effecting the Supreme Court to be a legislature onto itself.[7] Our very own Rep. Brian Harrison, former Chief of Staff of the U.S. Department of Health and Human Services, has put it more bluntly:

> The lawless Biden Administration has again ignored both the First Amendment and the Religious Freedom Restoration Act. Disregarding constitutional provisions they find inconvenient has become a hallmark of this Administration, and this proposal is another blatant example of the biggest threat to our Constitution—unelected bureaucrats both writing and enforcing law. In the Trump Administration we protected conscious rights. This proposed rule destroys them, will damage an already fragile supply of medical professionals, and must be withdrawn.

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[1] *See* ELI COLEMAN ET AL., STANDARDS OF CARE FOR THE HEALTH OF TRANSSEXUAL, TRANSGENDER, AND GENDER-NONCONFORMING PEOPLE 11, WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH (2012).

[2] *Id*. at 18.

[3] *Id.* at 40.

[4] *Bostock v. Clayton County*, 590 U.S. __ (2020).

[5] *Id*. (Alito, J., dissenting).

[6] *Id.*

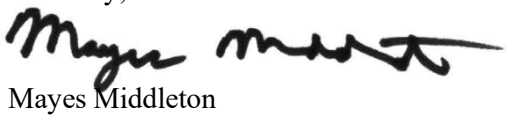
[7] *Id.*

To be clear, though, even Justice Gorsuch, who writes for the majority in *Bostock*, clearly states that the ruling should not be interpreted to extend to any other issue than the hiring and firing of an employee under Title VII: "Under Title VII . . . we do not purport to address bathrooms, locker rooms, or anything else of the kind."[8] Indeed, in the U.S. 5th Circuit's opinion in *Franciscan Alliance v. Becerra*—issued just a month and a half ago—where numerous faith-based healthcare organizations sued your own department over its May 2016 rule forcing health organizations in the U.S. to perform gender mutilating procedures, regardless of any religious or moral opposition, the court affirmed a permanent injunction restricting the federal government from forcing healthcare providers to perform these unconscionable acts.[9]

Secretary Becerra, the truth is that God made men and women in His image, and He made them different. This rule will set up an untold number of children for irreversible damage in the near future and will subject just as many physicians who have dedicated their lives to helping others to unwarranted and career-ending federal lawsuits and prosecutions. We conclude that this rule cannot stand and implore you to rescind it immediately for the sake of the future of religious and moral liberty in our country and state.

We look forward to your prompt response.

Sincerely,



Mayes Middleton
State Representative
Chairman, Texas Freedom Caucus

[8] Bostock, *supra* note 5.

[9] *Franciscan Alliance v. Becerra*, 47 F.4th 368 (5th Cir. 2022).