

Congress of the United States

Washington, DC 20510

February 5, 2025

Acting Director Charles Ezell
Office of Personnel Management
1900 E St NW
Washington, DC 20006

Dear Acting Director Ezell:

We write to demand that the Office of Personnel Management (OPM) immediately cease implementation of Executive Order 14168, issued by President Trump on January 20, 2025, including by rescinding the memorandum issued on January 29, 2025, that provides guidance to agencies and departments on how to carry out the edicts of the Executive Order.¹ Executive Order 14168 unlawfully attacks the civil rights of transgender Americans, and while Executive Order 14168 is in and of itself troubling, it is your memo and guidance that actually implements unlawful discrimination by the federal government against transgender people in the civil service and the provision of federal services.

Executive Order 14168 and OPM's implementing guidance directs agencies to end all programs, contracts, grants, positions, documents, directives, orders, regulations, materials, forms, communications, statements, plans, and training that "inculcate" or "promote" "gender ideology"²—which the Executive Order defines broadly to encompass acknowledging the simple existence of transgender people and gender identity.³

Transgender people are entitled to the same legal protections as all other Americans. Executive Orders cannot override the Constitution, federal laws, or Supreme Court precedent. Executive Order 14168 and the January 29, 2025, implementing memo attempt to unlawfully override all three. Alarming, this and other Executive Orders targeting the transgender community contain language demonstrating animus against that community. Animus is neither an important nor legitimate government interest, and government policies motivated by animus are clear violations of the Constitution's guarantee of equal protection of the laws.⁴

In *Bostock v. Clayton County*, the Supreme Court correctly held that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination against transgender people.⁵ Numerous courts and agencies have properly, and consistently with *Bostock's* legal reasoning, interpreted and enforced other civil rights laws that prohibit sex discrimination to prohibit discrimination based on gender identity. In addition, in *Lusardi v. McHugh*, the Equal Employment Opportunity

¹ Office of Personnel Management Memorandum, *Initial Guidance Regarding President Trump's Executive Order Defending Women* (Jan. 29, 2025), <https://www.opm.gov/media/yv1h1r3i/opm-memo-initial-guidance-regarding-trump-executive-order-defending-women-1-29-2025-final.pdf> [Hereinafter "OPM Memo"].

² *Id.*

³ Exec. Order No. 14168 (Jan. 20, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02090/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal>.

⁴ See, e.g., *Romer v. Evans*, 517 U.S. 620 (1996).

⁵ 590 U.S. 644 (2020).

Commission held that prohibiting transgender people from using the restroom consistent with their gender identity violates Title VII.⁶

The implementation of the January 29, 2025, memorandum in accordance with Executive Order 14168 would end trainings for the federal workforce and private employers about their obligations to transgender people under Title VII of the Civil Rights Act and other federal laws that protect transgender people. This memorandum would also require agencies to cancel contracts that have already been finalized and that businesses and organizations are relying on. The revocation of grants and other programs that support human rights abroad will put people's lives in jeopardy.⁷ Congress has taken numerous steps to explicitly protect the civil rights, safety, and health of transgender people,⁸ and it is impossible for the executive branch to simultaneously enforce these laws while also complying with this EO; for example, it is impossible for the federal government to adequately address and collect data on hate crimes against the transgender community, pursuant to the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, if the government cannot acknowledge the existence of transgender people. In addition, the memo's directive to withdraw regulations in a matter of days contradicts the Administrative Procedure Act.⁹

Moreover, this memo appears to be part of a broader attempt to decrease support for LGBTQI+ workers in the federal workforce and push them out of the federal government. The Administration has foreshadowed an intent "to lay off employees doing work related to 'gender ideology'" in a similar fashion to its targeting of federal workers who focus on diversity, equity, and inclusion.¹⁰ In that vein, the memo requires that "all employees whose position description involves inculcating or promoting gender ideology" be put on immediate administrative leave.¹¹

The memo also contains multiple provisions targeting transgender employees of the federal government, including disbanding employee resource groups (ERGs) that recognize or support transgender people—effectively banning all ERGs that support the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) community—and banning transgender employees from using the restroom that aligns with their gender identity. This latter action in particular will make working in the federal government untenable for transgender people and open the door to policing, harassment, and intimidation of all employees who do not fit stereotypical notions of femininity or masculinity.¹² This ban is impractical to enforce unless agencies plan to designate

⁶ EEOC Appeal No. 0120133395.

⁷ Ari Shaw, *Impact of Executive Order Pausing U.S. Foreign Aid on LGBTQI+ People*, UCLA WILLIAMS INSTITUTE (Jan. 2025), <https://williamsinstitute.law.ucla.edu/publications/foreign-aid-eo-impact/>. See also, *What Is the Global Gag Rule?*, OPEN SOCIETY FOUNDATIONS (Apr. 2019), <https://www.opensocietyfoundations.org/explainers/what-global-gag-rule>; Lauren Kent, *US foreign aid freeze is upending global aid and the work of contractors*, CNN (Jan. 30, 2025), <https://www.cnn.com/2025/01/30/world/us-foreign-aid-freeze-intl-latam/index.html>.

⁸ E.g., Pub. L. No. 111–84; Division E.; Pub. L. No. 113–4; Pub. L. No. 116–171; Pub. L. No. 117–103, Division W; Pub. L. No. 117–58.

⁹ 5 U.S.C. § 553.

¹⁰ Emily Davies, *White House Orders Federal 'Gender' Programs Shut Down, Workers Put on Leave*, Washington Post (Jan. 29, 2025), www.washingtonpost.com/dc-md-va/2025/01/29/federal-gender-programs-employees-leave/.

¹¹ OPM Memo, *supra* n. 1.

¹² See, e.g., Christopher Wiggins, Lauren Boevert & Nancy Mace confront woman they thought was trans in 'predictable' Capitol bathroom incident, THE ADVOCATE (Jan. 24, 2025), <https://www.yahoo.com/news/lauren-boevert-nancy-mace-confront-135559995.html>.

staff to “verify” people’s sex assigned at birth and opens the door to invasions of privacy such as inspections of people’s body parts.

Our federal workforce should be focused on supporting the American people, not policing who uses what restroom. Our federal workforce is also strongest when it reflects the diversity of Americans and communities it serves.

We are deeply alarmed by these and other actions the Trump Administration has taken in its first few weeks to eliminate all government support for the transgender community, including efforts designed to enforcing the rights and support the health of transgender individuals. We are also appalled by the Administration’s attempts to weaponize federal agencies to target the transgender community for discrimination and exclusion. These actions contradict federal law, Supreme Court precedent, and most importantly the Constitution’s guarantee of equal protection under the law.

Again, we urge you to rescind your unconstitutional and unlawful memo and instead uphold your oath to support and defend the Constitution and laws of the United States.


Sincerely,



Mark Takano
Chair
Congressional Equality
Caucus



Jamie Raskin
Ranking Member
House Committee on the
Judiciary



Gerald E. Connolly
Ranking Member
House Committee on
Oversight and Government
Reform