

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

WHITMAN-WALKER CLINIC, INC., *et al.*,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, *et al.*,

*Defendants.*

Case No. 1:20-cv-1630 (JEB)

**PLAINTIFFS' CLARIFICATION REGARDING RESPONSE AT HEARING ON  
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, through undersigned counsel, hereby submit the following clarification regarding a response provided to the Court during the hearing on Monday, August 3, 2020 on plaintiffs' motion for preliminary injunction.

The Court inquired whether plaintiffs' challenge to the elimination of "sex stereotyping" from the definition of "on the basis of sex" was based on the same arguments as their challenge to the elimination of "gender identity" and also whether plaintiffs' challenges rise and fall together. Counsel for plaintiffs responded "yes" to the Court's questions because the flaws that permeated the rulemaking process with respect to the elimination of "gender identity" apply equally to the elimination of "sex stereotyping." However, with respect to whether plaintiffs' challenges rise and fall together, to the extent relevant, defendants' arguments concerning *Franciscan Alliance's* vacatur of "gender identity" from the definition of "on the basis of sex" in the 2016 Final Rule – which plaintiffs maintain is a legal nullity in light of *Bostock* – do not apply to the elimination of "sex stereotyping." *Franciscan Alliance* did not address or vacate "sex stereotyping" from the definition of "on the basis of sex" in the 2016 Final Rule.

Dated: August 7, 2020

Respectfully submitted,

LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.

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\*\* Application for admission to U.S. District  
Court for the District of Columbia forthcoming.