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The Honorable James E. Boasberg
United States District Court Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, D.C. 20001

Re: *Whitman-Walker Clinic, Inc. et al. v. U.S. Dep't of Health & Human Servs., et al.*, No. 1:20-cv-01630-JEB (D.D.C.)

Dear Judge Boasberg,

Lambda Legal Defense and Education Fund, Inc. and Step toe & Johnson LLP represent the plaintiffs in the above-referenced matter. We write to clarify 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.

Respectfully submitted,



Laurie Edelstein
Step toe & Johnson LLP



Omar Gonzalez-Pagan
Lambda Legal Defense and Education Fund, Inc.

cc: All Counsel of Record