February 20, 2026

U.S. Department of Health and Human Services
Office for Civil Rights
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW, Washington, DC 20201

Submitted electronically

RE: RIN 0945-AA27; OCR-2026-0034
Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance

The 149 undersigned organizations write to express our strong opposition to the U.S. Department of Health and Human Services' (HHS) proposed rule "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance." As a coalition of organizations spanning across communities—including organizations advocating for disability rights and justice, LGBTQI+ equality, access to health and human services, and civil rights broadly—we reject HHS' attempts to weaken nondiscrimination protections for people with gender dysphoria. Contrary to HHS' claims, the proposed rule is unjustified, unwarranted, and contrary to the spirit and letter of the law. It would likely result in wide-ranging harm for people seeking to access critical services, disregard established case law, and conflict with the language and intent of Section 504. We are steadfastly opposed both to HHS' proposed rule and its concerted effort to erode the rights of people with gender dysphoria and transgender people more broadly.

HHS proposes to codify an exclusion of "gender dysphoria not resulting from physical impairments" in regulations promulgated under Section 504 of the Rehabilitation Act of 1973, as an attempt to carve out gender dysphoria from disability nondiscrimination protections applicable to HHS-funded programs and activities. This proposal suffers from substantive deficiencies that we outline throughout this comment. Among other shortcomings, HHS fails to consider the hardships the rule would impose on individuals facing discrimination; fails to adhere to the underlying purpose and rules of construction of Section 504; and fails to address the reasoning of numerous court decisions rejecting the exclusion of gender dysphoria from disability nondiscrimination laws. Given these serious deficiencies, HHS must withdraw the proposed rule in its entirety.

I. HHS fails to account for the harm that would result from the proposed rule.

If finalized, the proposed rule would impose lasting and far-reaching burdens on both individuals entitled to Section 504's guarantees and on covered entities. The prospective rule would promote discrimination against people with disabling[1] gender dysphoria in critical health and human

[1] As with all conditions, the analysis of whether gender dysphoria is disabling and thus qualifies for protections under Section 504 is determined through a case-by-case analysis of whether a particular

service programs, as well as create confusion and potential liability for covered entities. HHS' failure to account for or even meaningfully acknowledge this harm raises serious questions about whether it has disregarded crucially important evidence it is obligated to consider.

I-A. The proposed rule would harm individuals accessing HHS-funded activities and programs.

The proposed revisions to Section 504's implementing regulations would invite discrimination against people with gender dysphoria, as well as those regarded as having gender dysphoria or who have a history of the condition.[2] Individuals accessing critical federally funded health and human services could face denials of care and benefits, mistreatment, and other forms of discrimination. For example, eroding protections in HHS-funded programs and services could:

- lead people with gender dysphoria to be turned away when seeking medical care, regardless of whether the care they need is related to gender dysphoria;
- encourage discriminatory treatment in health settings, based on bias or stereotypes about people with gender dysphoria;
- subject children, parents, caregivers, foster parents, and prospective parents with gender dysphoria to exclusion and discrimination in child welfare settings; and
- exclude people with gender dysphoria and their families from participation in services for individuals experiencing poverty, such as Head Start, the school-readiness program for families with low incomes, and assistance for older adults provided through the Administration for Community Living.

Such discrimination can have a range of repercussions for individuals, threatening their health, security, and overall well-being. For example, denial of medical care jeopardizes health in both the short- and long-term, compounding existing population-specific health disparities. Individuals and families facing discrimination in human services could lose access to benefits like nutrition assistance, child care support, and home energy assistance programs, risking their safety, health, and financial stability. The prevalence of discrimination itself can magnify these harms by deterring people from seeking needed services for fear of mistreatment.[3]

Indeed, the proposed rule would exacerbate barriers that people with gender dysphoria already face when accessing health and human services. Data on the experiences of transgender people

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individual's gender dysphoria substantially limits one or more of their major life activities. Courts have recognized that gender dysphoria can potentially impact a range of major life activities, including, among others, "interacting with others, reproducing, and social and occupational functioning." *See Blatt v. Cabela's Retail, Inc.*, No. 5:14-CV-04822, 2017 WL 2178123, at *4 (E.D. Pa. May 18, 2017).

[2] The term "people with gender dysphoria" is used throughout this comment for brevity, and it is intended to include people regarded as having gender dysphoria and people with a history of gender dysphoria.

[3] Research on the experiences of transgender people broadly, including those with gender dysphoria, indicates that many postpone or forgo needed healthcare and other necessary services due to concerns about mistreatment and discrimination. *E.g.,* Ankit Rastogi et al., *Health and Wellbeing: A Report of the 2022 U.S. Transgender Survey* 28 (Jun. 2025), https://transequality.org/sites/default/files/2025-06/USTS_2022Health%26WellbeingReport_WEB.pdf; Caleb Smith & Haley Norris, *The LGBTQI+ Community Reported High Rates of Discrimination in 2024* (Mar. 12, 2025), https://www.americanprogress.org/article/the-lgbtqi-community-reported-high-rates-of-discrimination-in-2024.

generally, many of whom experience gender dysphoria, sheds light on the barriers that people with gender dysphoria may face. For example, a 2022 study of 92,329 transgender people revealed that, in just the previous year, approximately half (47%) had a negative experience with a health provider related to being transgender, such as being turned away, denied medical care, or verbally or physically harassed.[4] This mistreatment was even more common among respondents who identified as having a disability, with 58% reporting one or more of these negative experiences.[5]

Similarly, research has also revealed experiences of discrimination in human services, many of which may receive HHS funding. For example, transgender youth are vastly overrepresented in foster care settings, with one study finding that those in foster care are nearly five times as likely to be transgender as youth overall.[6] Studies of LGBTQ+ youth overall indicate that while they are in foster care, they are more likely than their peers to face mistreatment, isolation, and placement instability, leading to worse outcomes for their health, educational attainment, safety, and financial security.[7]

The prevalence and ramifications of such experiences in health and human services demand a robust enforcement of all nondiscrimination laws under HHS' purview, including Section 504's protections for people with gender dysphoria. But instead of seeking to ameliorate these existing barriers, HHS has proposed a rule that would worsen them, leaving people with gender dysphoria vulnerable to an even higher risk of mistreatment and undermining the legal recourse they may need to address the discrimination they face.

In addition to the harm it threatens for people with gender dysphoria broadly, the rule may also lead to increased discrimination against intersex people, potentially leading to significant harms that the proposed rule did not address. HHS' proposed reinterpretation could have the practical effect of imposing barriers for intersex people, who may also experience gender dysphoria,[8] when they seek Section 504's protections. Covered entities may be confused about the scope of the rule, or they may regard an intersex individual as falling within the exclusion as HHS has interpreted it—a perception that may be independent of whether they in fact experience gender dysphoria or whether the gender dysphoria they may experience can be said to result from "physical impairments." Covered entities may demand that an intersex individual "prove" their

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[4] Rastogi et al., *supra* note 3 at 30.
[5] *Id*. at 31.
[6] Laura Baams et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 143 PED. e20174211 (Mar. 2019), http://doi.org/10.1542/peds.2017-4211.
[7] *See, e.g., id*.; Eduardo Gutierrez, *Queer and Vulnerable: Identifying the Challenges of LGBTQ+ Youth in Foster Care* (Mar. 2024), https://chci.org/wp-content/uploads/2024/04/FINAL.Gutierrez-Eduardo.pdf.
[8] *See, e.g.,* Paulo Sampaio Furtado et al., *Gender Dysphoria Associated with Disorders of Sex Development*, 9 NAT. REV. UROL. 620 (Nov. 2012), http://doi.org/10.1038/nrurol.2012.182 (reporting average rates of gender dysphoria at 5% for Complete Androgen Insensitivity Syndrome, 10% for Congenital Adrenal Hyperplasia, 12.5% for Ovotesticular DSD, 20% for Partial Androgen Insensitivity Syndrome, and 29% for Mixed Gonadal Dysgenesis); Peggy T. Cohen-Kettenis, *Gender Change in 46,XY Persons With 5-a-Reductase-2 Deficiency and 17-B-Hydroxysteroid Dehydrogenase-3 Deficiency*, 34 ARCHIV. SEX. BEHAV. 399 (Aug. 2005), https://doi.org/10.1007/s10508-005-4339-4 (reporting rates of gender dysphoria up to 63% and 64% for these two patient groups).

intersex variation to obtain an accommodation or otherwise benefit from nondiscrimination protections, potentially delaying or limiting that intersex individual's access to needed and often time-sensitive services. Under the proposed rule, intersex people therefore may face greater barriers to accessing critical health and human services, exacerbating the considerable barriers to quality care and the health disparities they already experience.[9]

I-B. The proposed rule would create confusion for HHS-funded entities.

Despite the proposed rule's assertion that gender dysphoria is excluded from the definition of "disability," HHS-funded programs and activities would continue to be subject to statutory requirements independent of the rule. Section 504's prohibition on discrimination based on gender dysphoria, as affirmed by numerous courts, cannot be nullified by regulation, and covered entities must still meet their obligations under the statute. A rule that runs contrary to this statutory obligation would create confusion for covered entities, opening the door to or even tacitly encouraging violations of the law that would render them vulnerable to legal liability. The confusion this rule would engender could reach even beyond the HHS-funded entities to which it applies: It may leave entities funded by other federal agencies uncertain about the meaning of the statute in its full range of applications or about how other agencies may enforce it.

I-C. The proposed rule misrepresents the reliance interests it undermines.

HHS asserts that the proposed rule's effects on any reliance interests are minimal because the discussion of gender dysphoria in the preamble to the Section 504 rule promulgated in 2024 was not enforceable, and to the extent anyone relied on it, they would have "no legitimate reliance interest in maintaining that language, and indeed would be harmed by its continuation." HHS does not, and cannot, offer any explanation for its claim that those who relied on the preamble would be harmed unless the proposed rule is adopted. Further, this claim disregards the source of the reliance interests: not the recent preamble but the decade of case law recognizing that gender dysphoria can be a disability, as well as the text of the statute itself. Indeed, the impugned preamble did little more than acknowledge existing case law and indicate HHS' intent to comply with it.

II. The proposed rule runs contrary to the language and purpose of the statute and the case law interpreting it.

HHS asserts that the existing exclusion of "gender identity disorders not resulting from physical impairments" from the definition of "disability" under Section 504 necessarily includes "gender dysphoria not resulting from physical impairments." This claim, however, is contrary to the statutory language, the overwhelming body of case law, and Congress' express directive for "disability" to be broadly interpreted.

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[9] *See* Caleb Smith, *The Intersex Community Faced Significant Barriers and Challenges in 2024* (Jun. 25, 2025), https://www.americanprogress.org/article/the-intersex-community-faced-significant-barriers-and-challenges-in-2024.

II-A. The proposed rule misinterprets the statutory language.

As numerous courts have recognized, the best reading of "gender identity disorders not resulting from physical impairments" does not encompass gender dysphoria. The proposed rule's claim that the distinction between gender identity disorder and gender dysphoria is "merely linguistic" disregards key differences between the two conditions. While gender dysphoria as a diagnostic category has evolved from conditions previously recognized by the medical community, it differs from gender identity disorders to such a degree that the statutory language cannot be said to apply to gender dysphoria.

The core feature of "gender identity disorders" (GIDs) was, as the name suggests, having a disordered identity—a "mental illness" that resulted in one's wanting to be, or believing that one actually was, something they were not.[10] As the Fourth Circuit concluded in *Williams v. Kincaid*, the diagnosis pathologized transgender identity.[11] Under the DSM-III-R, "mild" cases included "the person [who] is aware that he is a male or she is a female" but feels "uncomfortable" about this, as well as "severe" cases, "as in Transsexualism, [where] the person not only is uncomfortable with the assigned sex but has the sense of belonging to the opposite sex."[12]

The core feature of gender dysphoria, by contrast, is clinically significant distress (i.e., emotional suffering) or impairment in social, occupational, or other areas of functioning (i.e., difficulty performing daily life functions regardless of whether one experiences emotional suffering).[13] The diagnostic criteria for gender dysphoria reject the foundational assumptions upon which the diagnosis of GID was premised—that is, that the presenting feature of the condition was a purportedly "disordered" identity.[14] For people with gender dysphoria, identity is not a problem in need of treatment—*dysphoria* is.[15]

Contrary to HHS' argument, the DSM's shift between GIDs and gender dysphoria is more than a superficial attempt to reorganize or rephrase diagnostic criteria. Rather, as *Williams* correctly concluded, the changes in the DSM reflect substantive shifts in clinical understanding. They demonstrate that gender dysphoria is not the same as, and is not encompassed by, GIDs. As

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[10] *See Diagnostic and Statistical Manual of Mental Disorders* 71 (3rd ed., rev.) (1987) [hereinafter DSM-III-R]; *Williams v. Kincaid*, 45 F.4th 759, 767 (4th Cir. 2022).

[11] 45 F.4th at 767 ("[I]n 1990, the gender identity disorder diagnosis marked being transgender as a mental illness."); *id.* at 769 (noting that "the older DSM pathologized the very existence of transgender people").

[12] DSM-III-R at 71.

[13] *See* American Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 452–53 (5th ed. 2013) [hereinafter DSM-5].

[14] *See id*. at 451.

[15] *See Williams*, 45 F.4th at 767 ("[A] diagnosis of 'gender identity disorder . . . indicat[ed] that the clinical problem was the discordant gender identity.") (quoting *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 611 (4th Cir. 2020)); *id.* at 768 ("[A] diagnosis of gender dysphoria, unlike that of 'gender identity disorder [ ],' concerns itself primarily with *distress* and other disabling symptoms, rather than simply being transgender."). *See also* DSM-5 at 451 ("The current term is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity per se.").

Williams rightly notes, the former cannot simply be collapsed into the latter, any more than "anxiety disorder" is the same as or is subsumed by "hysteria."[16]

II-B This rule disregards the overwhelming majority of case law from the past decade.

Courts have overwhelmingly agreed that gender dysphoria is not categorically excluded from Section 504 or under mirroring language in the ADA. Since the publication of the DSM-5 and emergence of the diagnosis of gender dysphoria in 2013, the vast majority of cases addressing the issue—twenty-six out of thirty-one (84%)—have concluded that gender dysphoria is not categorically excluded from Section 504 or the ADA.[17] Indeed, every court that has addressed the

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[16] *See Williams*, 45 F.4th at 769 n.5; *see also id.* at 767 ("[I]n 1990, the medical community did not acknowledge gender dysphoria either as an independent diagnosis or as a subset of any other condition.").

[17] *Williams*, 45 F.4th at 766–69 (holding that gender dysphoria is not categorically excluded), *cert. denied*, 143 S. Ct. 2414 (2023); *accord Doe v. Horne*, No. CV-23-00185, 2024 WL 3091984, at *3 (D. Ariz. June 21, 2024); *Doe v. Ga. Dep't of Corr.*, 730 F. Supp. 3d 1327, 1348 (N.D. Ga. 2024); *Kozak v. CSX Transp., Inc.*, No. 20-CV-184S, 2023 WL 4906148, at *6–7 (W.D.N.Y. Aug. 1, 2023); *Fly v. United States*, No. 18-cv-063, 2023 WL 10447544, at *21 (D.N.D. Dec. 15, 2023) (assuming that gender dysphoria is covered by ADA and dismissing ADA claims on other grounds), *report and recommendation adopted in relevant part*, 2024 WL 1188806 (D.N.D. Jan. 29, 2024); *Guthrie v. Noel*, No. 1:20-CV-02351, 2023 WL 8115928, at *1 (M.D. Pa. Sept. 11, 2023), *report and recommendation adopted*, 2023 WL 8116864, at *1 (M.D. Pa. Sep. 29, 2023); *Melnick v. Polis*, No. 21-cv-01695, 2023 WL 11918117, at *3 (D. Colo. Dec. 1, 2023) (assuming without deciding that gender dysphoria is a disability under ADA and dismissing claim on other grounds); *Griffith v. El Paso Cnty., Colorado*, No. 21-cv-00387, 2023 WL 2242503, at *17–18 (D. Colo. Feb. 27, 2023) (holding that GIDs exclusion does not apply to gender dysphoria, and rejecting reasoning of pre-DSM-5 case in same district, *Michaels v. Akal Sec., Inc.*, No. 09-cv-01300, 2010 WL 2573988 (D. Colo. June 24, 2010), as outdated and summarily reasoned), *report and recommendation adopted*, 2023 WL 3099625 (D. Colo. Mar. 27, 2023), *vacated in part on other grounds*, 129 F.4th 790, 835 (10th Cir. 2025); *Pinson v. Fed. Bureau of Prisons*, No. 3:23-CV-384, 2023 WL 8358067, at *3 (D. Conn. Dec. 1, 2023); *Gregory v. Jeffreys*, No. 21-1097, 2022 WL 617408, at *6 (C.D. Ill. Mar. 2, 2022) (allowing plaintiff to proceed for purposes of notice pleading with a claim that gender dysphoria is covered by ADA); *Gibson v. Cmty. Dev. Partners*, No. 3:22-cv-454, 2022 WL 10481324, at *7 (D. Or. Oct. 18, 2022) ("assuming without deciding that gender dysphoria is a disability" and dismissing ADA and Rehabilitation Act claims on other grounds); *Alexander v. Mass. Dep't of Corr.*, No. 20-10020, 2022 WL 1407946, at *7 (D. Mass. May 4, 2022) (denying motion to dismiss incarcerated plaintiff's ADA claim alleging discrimination based on gender dysphoria); *Sutton v. Washington*, No. C19-1500, 2021 WL 9782776, at *18–19 (W.D. Wash. July 21, 2021) (treating gender dysphoria as a disability under ADA and Rehabilitation Act and granting summary judgment to state on other grounds), *report and recommendation adopted in relevant part*, 2022 WL 16707276, at *10 (W.D. Wash. 2022); *Shorter v. Garland*, No. 19cv108, 2021 WL 6062280, at *1–2 (N.D. Fla. Dec. 22, 2021) (finding that the GIDs exclusion "does not provide a basis for granting . . . summary judgment" and rejecting report and recommendation that stated, without reasoning, that "'[g]ender dysphoria, as a gender identity disorder . . . is specifically exempted as a disability by the Rehabilitation Act'" (quoting *Shorter v. Barr*, No. 19cv108, 2020 WL 1942785, at *9–10, 10 n5 (N.D. Fla. Mar. 13, 2020))); *Doe v. Hosp. of Univ. of Pa.*, 546 F. Supp. 3d 336, 348-509 (E.D. Pa. 2021); *Doe v. Pa. Dep't of Corrs.*, No. 20-cv-00023, 2021 WL 1583556, at *7–12 (W.D. Pa. Feb. 19, 2021), *report and recommendation adopted in relevant part*, 2021 WL 1115373, at *3 (W.D. Pa. Mar. 24, 2021); *Venson v. Gregson*, No. 18-cv-2185, 2021 WL 673371, at *2–3 (S.D. Ill. Feb. 22, 2021) (rejecting argument that "for all practical purposes [gender dysphoria] is equivalent to 'gender identity disorder' because gender identity is still at the crux of Plaintiff's diagnosis," and holding a prison failed to properly accommodate a transgender person); *Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 134–35 (E.D. Pa. 2020); *Tay v. Dennison*, No. 19-cv-00501, 2020 WL 2100761, at *3 (S.D. Ill. May 1, 2020); *Castle v. Cobb Cnty.*, No. 1:19-CV-01406, 2022 WL 1569705, at *2 (N.D. Ga. May 18, 2022); *Iglesias v. True*, 403 F. Supp. 3d 680,

issue since *Williams* has reached this conclusion. A small minority of just five cases, all decided before the Fourth Circuit's 2022 decision in *Williams*, have concluded otherwise.[18]

Interpreting the GIDs exclusion to encompass gender dysphoria would also implicate constitutional concerns. As the Fourth Circuit explained in *Williams*, and as numerous district courts have similarly concluded, there is "no legitimate reason" why Congress would intend to exclude people with gender dysphoria from disability nondiscrimination protections; the only reason to be "glean[ed] from the text and legislative record is 'a bare . . . desire to harm a politically unpopular group,'" which "cannot constitute a legitimate governmental interest."[19]

II-C The proposed rule is contrary to the rules of construction codified by Congress.

In 2008, after a series of four Supreme Court decisions narrowly construing the definition of disability under the ADA,[20] Congress enacted the ADA Amendments Act of 2008 (ADAAA). This law amended the ADA's and Section 504's definition of disability by, *inter alia*, instructing courts to construe "[t]he definition of disability in this chapter . . . in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter."[21] As the Fourth Circuit observed in *Williams*, the meaning of these words is plain: The court must construe the definition of disability broadly, and its exclusions narrowly.[22] To interpret the GIDs exclusion

686–88; *London v. Evans*, No. 19-559, 2019 WL 5726983, at *6 (D. Del. Nov. 5, 2019); *Harvard v. Inch*, 411 F. Supp. 3d 1220, 1240, 1245 (N.D. Fla. 2019); *Edmo v. Idaho Dep't of Corrs.*, No. 17-cv-00151, 2018 WL 2745898, at *7–8 (D. Idaho Jun. 7, 2018); *Doe v. Mass. Dep't of Corrs.*, No. 17-12255, 2018 WL 2994403, at *6 (D. Mass. Jun. 14, 2018); *Blatt*, No. 14-cv-4822, 2017 WL 2178123, at *3.

[18] *See Duncan v. Jack Henry & Assocs., Inc.*, 617 F. Supp. 3d 1011, 1056–57 (W.D. Mo. 2022) (holding GIDs exclusion "encompasses . . . diagnosis of gender dysphoria"); *accord Lange v. Houston Cnty.*, 608 F. Supp. 3d 1340, 1360–63 (M.D. Ga. 2022); *Doe v. Northrop Grumman Sys. Corp.*, 418 F. Supp. 3d 921, 929–30 (N.D. Ala. 2019); *Parker v. Strawser Constr., Inc.*, 307 F. Supp. 3d 744, 753–54 (S.D. Oh. 2018); *Gulley-Fernandez v. Wis. Dep't of Corr.*, No. 15-cv-995, 2015 WL 7777997, at *1–3 (E.D. Wis. Dec. 1, 2015). One of these cases, *Gulley-Fernandez*, is of little to no interpretive value. That case was litigated by an incarcerated plaintiff appearing *pro se*. *Gulley-Fernandez*, 2015 WL 7777997, at *1. Unsurprisingly, the court summarily concluded in a single sentence, without any analysis whatsoever, that gender dysphoria was excluded by the ADA. *Id*. at *3. Unlike *Blatt* and many subsequent cases, *Gulley-Fernandez* did not analyze whether the GIDs exclusion applies to the new diagnosis of gender dysphoria nor whether the exclusion violates equal protection, *see id*. at *1–4, and the court reached its decision without the benefit of a statement of interest filed by the Department of Justice or an amicus brief filed by state or national transgender rights organizations, s*ee generally Gulley–Fernandez*, No. 15-cv-995 (E.D. Wis).

[19] *Williams*, 45 F.4th at 773 (citing *Grimm* for proposition that "the ADA's exclusion of gender identity disorders [was] *itself* . . . evidence of such discriminatory animus"); *see also Doe v. Pa. Dep't of Corr.*, No. 20-cv-00023, 2021 WL 1583556, at *11 (W.D. Pa. Mar. 24, 2021); *Doe*, No. 17-12255, 2018 WL 2994403, at *8; *Blatt*, No. 5:14-cv-04822, 2017 WL 2178123, at *4.

[20] *See* Americans with Disabilities Act Amendments Act of 2008 § 2 (b)(2)–(4) , Pub. L. No. 110-325, 122 Stat. 3553, 3554 (2008) (stating that part of the purpose was to reject the reasoning of "the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases [*Murphy v. United Parcel Serv., Inc.*, 527 U.S. 516 (1999) and *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999)]" and "in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002)").

[21] 42 U.S.C. § 12102(4)(A).

[22] *See Williams*, 45 F.4th at 766 ("Congress expressly directed courts to construe the amended [ADA] as broadly as possible. Moreover, because the 2008 amendments to the ADA were intended to make it

broadly to apply to gender dysphoria, the Fourth Circuit concluded, would violate the plain meaning of the law. It would "rewrite the statute in two impermissible ways: by penciling a new condition into the list of exclusions, and by erasing Congress's command to construe [the statute] as broadly as the text permits."[23]

The proposed rule ignores this plain meaning. Section 504's "broad coverage" provision requires courts to construe the definition of disability broadly "under this *chapter*," i.e., throughout the *entire* statute—not select parts of it.[24] As a matter of logic, construing the definition of disability broadly throughout the entire statute requires construing exceptions to the definition of disability narrowly.[25] Had Congress wanted to limit the reach of the "broad coverage" provision, it could have explicitly carved the GIDs exclusion out of that provision as it did with respect to other provisions in the ADAAA.[26] Congress did no such thing. HHS' assertion that gender dysphoria is excluded from Section 504's definition of disability represents an unwarranted and unnecessarily restrictive interpretation of the statute—flatly contradicting the ADAAA's explicit purpose to "reinstat[e] a broad scope of protection."[27]

III. The misrepresentations and baseless claims underlying the proposed rule further demonstrate it cannot be supported.

III-A HHS' claim that excluding people with gender dysphoria is necessary to protect people with other disabilities is false.

HHS asserts that recognizing protections for people with gender dysphoria undermines the integrity of Section 504 and endangers its guarantees of nondiscrimination for people with other disabilities. For example, when presenting the rationale for the proposed rule, HHS Secretary Robert F. Kennedy Jr. claimed that recognizing gender dysphoria as a potential disability "betrayed the original intention of those laws and gendered [*sic*] widespread public resentments against those laws among the American people and discredit the statutes in the public mind."[28] Doing so, he added, "injures the statutes themselves and injures other people who are entitled to

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easier for people with disabilities to obtain protection under the ADA, courts must construe the ADA's exclusions narrowly.") (citation modified).

[23] *Id.* at 770; *see also id.* at 769–70 ("[G]iven Congress' express instruction that courts construe the ADA in favor of maximum protection for those with disabilities, we could not adopt an unnecessarily restrictive reading of the ADA.").

[24] *See* 42 U.S.C. § 12102(4)(A) ("The definition of disability *in this chapter* shall be construed in favor of broad coverage of individuals *under this chapter*, to the maximum extent permitted by the terms of *this chapter*.") (emphasis added).

[25] *See Williams*, 45 F.4th at 766.

[26] *See, e.g.*, ADA Amendments Act § 3(4)(E)(ii), 122 Stat. at 3557 (stating that the ADA's prohibition on consideration of "the ameliorative effects of mitigating measures" in determining whether a person has a disability does *not* apply to the ameliorative effects of "ordinary eyeglasses or contact lenses"); *id.* §(6)(a)(1)(g) (stating that the ADA's prohibition on discrimination "on the basis of disability" does *not* apply to discrimination "because of the individual's *lack of* disability").

[27] *Id*. § 2(b)(1).

[28] Dep't of Health & Human Servs., *Protecting Children*, at 6:06 (YouTube, Dec. 18, 2025), https://www.youtube.com/watch?v=aY1XfN6Tt0Q&t=2189s.

that protection and who Americans want to see protected."[29] This argument, offered with no evidence beyond conjecture, appears to be little more than an effort to stigmatize people with gender dysphoria, appropriate the concerns of the disability community, and weaponize a civil rights statute to promote discrimination.

As a coalition that includes numerous organizations that have long fought for disability rights and justice, we firmly reject HHS' claim that it is acting on behalf of people with disabilities in proposing this rule. Recognizing Section 504's guarantees for all whom Congress intended to protect in no way weakens those guarantees for other people with disabilities. To the contrary, efforts to limit Section 504's coverage do a disservice to all people with disabilities. The breadth and diversity of the disability community have always been critically important to its strength. Further, people with disabilities have long rejected the notion that federal disability rights laws should protect only a narrow set of people viewed as "the truly disabled," and Congress rejected that notion as well in the ADAAA.

III-B The animus that appears to motivate the proposed rule cannot justify rulemaking.

While the proposed rule asserts that it is driven by statutory interpretation, the reasoning HHS has proffered for the rule suggests a motivation that is, in whole or part, based on a bare desire to harm people with gender dysphoria and transgender people more broadly. For example, when Deputy Secretary Jim O'Neill introduced the proposed rule—one of several concurrent actions HHS announced targeting transgender people—he prefaced it with false and inflammatory justifications, including that recognizing the existence of transgender people represents a "denial of fundamental truths" that "can destroy nations from within," that it is "at the root of the evils we face," and that it demonstrates "a hatred for nature as God designed it and for life as it was meant to be lived."[30] Recognizing gender dysphoria as a potential disability under Section 504, he claimed, "perverted" the statute and constituted a "war on nature,"[31] while the proposed rule is necessary for "stopping the madness and stopping the war."[32] These contemporaneous statements and actions, coming from the highest ranks of the agency, raise serious questions regarding the role that animus has played in this proposed rule and the extent to which other justifications HHS has offered may be pretextual. Such prejudice, furthermore, is precisely the sort of bias against people with disabilities that Section 504 was in part enacted to address, and HHS officials' blatant promotion of this prejudice only underscores why maintaining nondiscrimination protections for people with gender dysphoria is so critical.

IV. The alternative of rescinding the 2024 Section 504 Rule in its entirety should be firmly rejected.

HHS seeks comment on regulatory alternatives it has considered, including the complete rescission of the Section 504 rule the agency promulgated in 2024. This alternative is not only

[29] *Id*. at 6:25.
[30] *Id*. at 37:06.
[31] *Id*. at 37:38.
[32] *Id*. at 38:09.

"broader than necessary" to address the application of Section 504 to gender dysphoria.[33] It would upend a wide array of provisions offering vital and long-overdue clarifications. Rescinding the entire rule would eliminate numerous updates to prior regulations that were needed to reflect more than forty years of legal developments, including statutory changes and Supreme Court decisions. We urge HHS to reject this alternative.

V. HHS failed to provide sufficient opportunity for comment.

The 30-day comment period is markedly insufficient for a proposed rule of this magnitude and denies stakeholders the time required to assess and respond to the full scope of its impact. A standard 60-day comment period is particularly needed given the lasting and wide-ranging harms the rule may have, its inconsistency with the statute and prior case law, and the cascading effects it may have even beyond HHS-funded entities. The abbreviated comment period has been eroded even further by the overlap with holidays, as well as a technical error on Regulations.gov that barred the submission of comments for a portion of the 30-day period.

VI. Conclusion

This proposed rule would create unwarranted hardships for people with gender dysphoria, runs contrary to the intent and rules of construction of Section 504, and deviates from numerous court decisions that have rejected the reasoning it relies on. We once again urge HHS to withdraw the rule and instead focus its efforts on strengthening and enforcing the protections of Section 504 for all individuals.

We request that the supporting documentation we have made available through our citations be considered as part of the formal administrative record for purposes of the Administrative Procedure Act. If HHS does not intend to consider these materials part of the record as requested, we ask that you notify us and provide us with an opportunity to submit copies of the studies and articles into the record. For further information, please contact Ma'ayan Anafi, Senior Counsel for Health Equity and Justice at the National Women's Law Center at manafi@nwlc.org.

Abortion Forward
Access Living
Access Ready Inc.
Advance Maryland
Advocates for Trans Equality
Advocates for Youth
AFL-CIO
AIDS United
Alliance for TransYouth Rights
American Association of People with Disabilities
American Atheists

[33] Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 90 Fed. Reg. 59478, 59482 (proposed Dec. 19, 2025) (to be codified at 45 C.F.R. pt. 84).

American Civil Liberties Union
Americans United for Separation of Church and State
Autistic People of Color Fund
Autistic Self Advocacy Network (ASAN)
Autistic Women & Nonbinary Network
Bazelon Center for Mental Health Law
California Foundation for Independent Living Centers
California LGBTQ Health and Human Services Network
California Rural Legal Assistance, Inc.
California Women's Law Center
Callen-Lorde Community Health Center
Center for Children's Advocacy
Center for Health Law and Policy Innovation
Center for Law and Social Policy (CLASP)
Center for Medicare Advocacy
Center for Public Representation
Center for Racial & Disability Justice
Center for Reproductive Rights
CenterLink: The Community of LGBTQ Centers
Children's Defense Fund - New York
Clearinghouse on Women's Issues
Coalition on Human Needs
Colorado Center on Law and Policy
CommunicationFIRST
Community Catalyst
Council for Global Equality
Deaf Equality
Disability Rights California
Disability Rights Education and Defense Fund
Diverse Elders Coalition
Doctors for America
ED-OCR Alumni Collective
Epilepsy Foundation of America
Equal Justice Society
Equality California
Equality Illinois
Equality Michigan
Equality Virginia
EqualityMaine
Fair Wisconsin
Family Voices National
Family Voices NJ
Feminist Majority Foundation
Fenway Health

Forward Together
Gender Justice
Gender Justice League
GLBTQ Legal Advocates & Defenders (GLAD Law)
Health Law Advocates
Homeless Action Center
Human Rights Campaign
Human Rights Defense Center
Human Rights First
Immigration Equality
Impact Fund
Indivisible Chicago
Institute for Exceptional Care
interACT: Advocates for Intersex Youth
Jacobs Institute of Women's Health
Japanese American Citizens League
Justice in Aging
Law Foundation of Silicon Valley
Lawyers for Good Government
League of United Latin American Citizens (LULAC)
Legal Aid at Work - Disability & Health Justice Program and Gender Equity & LGBTQ Rights Program
Legal Council for Health Justice
Little People of America
Los Angeles LGBT Center
Maryland Communities United
Massachusetts Law Reform Institute
Mazzoni Center
Movement Advancement Project
National Abortion Federation
National Association for Rights Protection and Advocacy
National Association of Counsel for Children
National Association of Social Workers
National Center for Law and Economic Justice
National Center for LGBTQ Rights
National Collaborative for Transformative Youth Policy
National Council of Jewish Women
National Disability Institute
National Disability Rights Network (NDRN)
National Education Association
National Health Law Program
National Latina Institute for Reproductive Justice
National LGBTQ+ Bar Association
National Network of Abortion Funds

National Partnership for Women and Families
National PLACE
National Women's Law Center
National Women's Political Caucus
NBJC
New Disabled South
Oasis Legal Services
OurTransLife.org
Out Accountability Project
OutCenter Southwest Michigan
People With Disabilities Foundation
PFLAG National
Physicians for Reproductive Health
Planned Parenthood Action Fund
Positive Women's Network-USA
Pride At Work, AFL-CIO
Public Counsel
Quinnipiac University School of Law Legal Clinic
R.S. Dyton Associates
Reproaction
Reproductive Freedom for All
Reproductive Justice Action Collective
Rocky Mountain Equality
SAGE
San Francisco AIDS Foundation
Seliavski Law PLLC
Service Employees International Union (SEIU)
Serving at-risk families everywhere, Inc.
SPAN Parent Advocacy Network
State Innovation Exchange (SiX)
TDIforAccess
The Advocacy Institute
The Center for Constitutional Rights
The Hill Law Firm
The Institute for Health Research & Policy at Whitman-Walker
The Kelsey
The LGBTQIA+ Cancer Network
The National Disability Rights Network
The Partnership for Inclusive Disaster Strategies
The Trevor Project
TransAthlete
TransFamily Support Services
Transgender Education Network of Texas (TENT)
Transhealth

Union for Reform Judaism
Unitarian Universalists for Social Justice
Uptown People's Law Center
US Gender and Disability Alliance
Western Center on Law & Poverty
Women Enabled International