



UNITED STATES COMMISSION ON CIVIL RIGHTS

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December 18, 2015

The Honorable Trent Franks
Chairman, House Subcommittee on the Constitution and Civil Rights
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Franks,

On December 15th, 2015, you received a letter from two members of the United States Commission on Civil Rights (Commission) requesting you to introduce legislation that would prohibit the Department of Education from requiring that schools allow transgender students to use locker rooms or restrooms that match their gender identity. I am writing to inform you that their letter does not represent the official position of the Commission and is an unauthorized use of official Commission letterhead.

Unfortunately, the unauthorized use of official Commission letterhead is a reoccurring issue. This summer, the Senate Report on the Commission's authorization bill acknowledged the misuse of title issue and instructed Commissioners not to use official letterhead when communicating their personal opinion as follows:

Use of Letterhead.--On multiple occasions the Commission has had to clarify, including in a letter to this Committee, that letters using Commission letterhead by individual Commissioners did not constitute the opinion of the Commission. In order to eliminate the confusion caused by the use of Commission letterhead, the Commission is directed to use letterhead only for items that reflect the views of the Commission. Individual Commissioners are not precluded from expressing their own opinions, but shall not use official letterhead as part of their communications, and if writing in their role as a Commissioner, shall clearly state that their opinion is their own and not that of the Commission.

S. Rep. No. 114-66 (June 16, 2015). Additionally, both the Government Accountability Office and the Office of Government Ethics have previously commented on the misuse of title by members of the Commission. See GAO Report 15-92, U.S. Commission on Civil Rights, Management Improvements Are Needed to Better Achieve Its Mission (February 2015) at 19-23 (discussing that the misuse of letterhead by individual Commissioners has confused external organizations and jeopardized the Commission's effectiveness); see also Office of Government Ethics Report No. 15-04, Ethics Program Review, U.S. Commission on Civil Rights (November 2014) at 17-18 (noting that a "Commissioner



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cannot use his/her official title, the agency seal, agency letterhead or otherwise leave a third party to think that the speaking or writing has the sanction of the Commission.”).

Pursuant to Commission Administrative Instructions, I am the official spokesperson of the eight-member Commission. The letter submitted to you on Commission letterhead was not presented to the Commission body for a vote and therefore does not represent the position of the Commission regarding access to restrooms by transgender students. Even though the authors use their official titles and official government e-mail address, the letter by Gail Heriot and Peter Kirsanow was sent in their personal capacity. Their letter should not be given any weight on the position of the Commission in any manner whatsoever.

The Commission is charged with providing accurate information to the public on civil rights issues. 42 U.S.C. § 1975a. The Commission takes this responsibility seriously.

With regard to the substance of their letter, please note that the Commission looked at the issue of Title IX and transgendered individuals in chapter six of our report entitled “Peer-to-Peer Violence Bullying.”

When it has looked at the issue of the rights of transgender persons, the Commission has sought to protect those rights and not infringe upon or eliminate them. For example, in our recent Statutory Enforcement Report to Congress and the President, entitled “With Liberty and Justice for All, The State of Civil Rights at Immigration Detention Centers,” the Commission expressed concern about the need to protect the rights and treatment of transgender persons in immigration detention facilities. Indeed, as was just reported in the media, as it relates to the mistreatment of transgender persons in detention facilities:

Lawmakers have begun to take notice of such claims. In September, the U.S. Commission on Civil Rights released a Statutory Enforcement Report on the state of civil rights at ICE facilities. The report included a section on the treatment of transgender detainees—the first time such a report had acknowledged the severity of the issue and the need to educate officials.¹

Therefore, in my official capacity as Chairperson and spokesperson for the Commission I repudiate the letter sent to you by my colleagues Gail Heriot and Peter Kirsanow, and remind you that our role as the nation’s conscience on civil rights is not to contract or lessen civil rights protections of citizens and residents of our country, but to protect the rights of all Americans, including transgender persons.

¹ <http://arizonasonoranewsservice.com/group-defends-advocates-for-transgender-detainees/>



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Please do not hesitate to contact me if you have any questions about this matter.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin R. Castro".

Martin R. Castro, Chairman

Cc: Secretary of Education, Arne Duncan