

Congress of the United States
Washington, DC 20510

July 6, 2022

The Honorable Tom Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Secretary Vilsack:

We write to you to express our deep opposition to your recent memorandum suggesting that the United States Department of Agriculture’s (USDA) Food and Nutrition Service (FNS) will withhold the funding of free and low-cost meals for economically disadvantaged students if schools do not embrace this administration’s radical interpretation of subjective gender identity and sexual orientation¹.

As you are aware, the Food and Nutrition Act established the National School Lunch Program (NSLP), which is administered by state agencies that receive federal funding through the USDA and then enter into agreements with individual schools to provide that funding. Each day, the NSLP provides lunches to nearly 30 million low-income students – many who would otherwise not have access to meals most days.² Based on your May 5, 2022 memorandum, which lacked an appropriate rulemaking process subject to notice and comment, it appears that schools that receive this funding might be forced to adhere to gender identity anti-discrimination policies and permit biological males who self-identify as female access to female private spaces, such as bathrooms, locker rooms, and showers. These entities might also be required to allow biological males who self-identify as girls to compete against biological girls in female sporting events or risk losing federal funds for lunches, breakfasts, and snacks. Moreover, schools could be at risk of losing this important funding if students are accused of using the wrong preferred pronouns when referring to fellow students.³

The NSLP’s free and reduced-cost meals ensure that impoverished students receive necessary nutrition. Research indicates that accessible school lunch options are associated with better attendance rates, improved performance in the classroom, better test scores, reduced food

¹[Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update | Food and Nutrition Service \(usda.gov\)](#)

²<https://schoolnutrition.org/aboutschoolmeals/schoolmealtrendsstats/#:~:text=Pre%2Dpandemic%2C%20nearly%20100%2C000%20schools,20.1%20million%20free%20lunches>

³<https://patch.com/wisconsin/green-bay/students-accused-using-wrong-pronouns-subject-title-ix-complaint>

insecurity, and lower obesity rates.⁴ It is unacceptable to hold needy children hostage in order to promote a woke, ideologically driven agenda that ignores the realities of biological sex. This administration hides the horrors of these extremist policies behind the misleading rhetoric of “rooting out discrimination.”⁵ However, restricting federal funding to state and local entities for school meals would only increase discrimination within schools. Data shows that losing free and reduced-cost school lunches would primarily hurt low-income and minority students.⁶ It is unconscionable to use these vulnerable students as pawns in pursuit of forcing schools to operate according to a radical ideology regarding sexual orientation and subjective gender identity that denies science.

We urge you to prioritize the needs of all students over the desire of this administration to implement an all-encompassing, woke gender orthodoxy that will subject school children to undue social pressures which could lead to irrevocable harm. Rather than hold these schools hostage, we implore you to clarify and reevaluate this detrimental policy and guarantee the availability of funding for school meals without coercing schools and state agencies to implement an agenda that promotes radical gender ideology.

Furthermore, we ask that you respond to the following questions regarding the May 5, 2022, FNS memo by July 31, 2022.

1. Does this memo contain new requirements and legal standards regarding nondiscrimination? If yes, are those requirements and standards binding on state agencies, individual schools, and program operators?
2. Does this memo, which expands the scope of the Food and Nutrition Act regarding nondiscrimination, affect the substantive rights of the public?
3. Please explain why the USDA decided to develop this new, unprecedented, and broader application of the Food and Nutrition Act, which creates new legally binding obligations and rights, as guidance and not as a legislative rule, subject to notice and comment.
4. Do you believe the public should have a voice in rulemaking and the formulation of new regulatory requirements, consistent with the Administrative Procedure Act?
5. When releasing this memo, the USDA stated that additional guidance will be issued. Are you stating that the substance of this memo and future documents related to this major and legally binding decision regarding nondiscrimination will not go through the formal rulemaking process?
6. Why did the USDA provide no grace period for accepting and processing discrimination complaints based on sexual orientation and gender identity in FNS programs? You have stated that the guidance is effective immediately, but then state that more guidance is

⁴<https://www.cdc.gov/healthyschools/npao/schoolmeals.htm>

⁵[USDA Promotes Program Access, Combats Discrimination Against LGBTQI+ Community | Food and Nutrition Service](#)

⁶<https://frac.org/programs/national-school-lunch-program/benefits-school-lunch>

forthcoming. If more guidance is needed, then why make the guidance effective immediately and why have no grace period for accepting and processing complaints? Please clarify what is required and what is not required as of now.

7. Do you think the USDA would have benefitted from getting public comments to better understand potential consequences of this guidance, such as how many children might lose access to free or reduced-price meals?
8. Is it appropriate to withhold funding, and thereby take away free meals from hungry children, in order to impose these new nondiscrimination requirements?
9. What is the specific legal basis for the USDA to expand the scope of the nondiscrimination provisions under Title IX and the Food and Nutrition Act?
10. What is the USDA's intended enforcement mechanisms for schools that fail to adhere to this guidance?

Thank you for your prompt attention, and we look forward to your response on this important matter.

Sincerely,



Ralph Norman
Member of Congress



Markwayne Mullin
Member of Congress



Lauren Boebert
Member of Congress



Jeff Duncan
Member of Congress



Diana Harshbarger
Member of Congress



Byron Donalds
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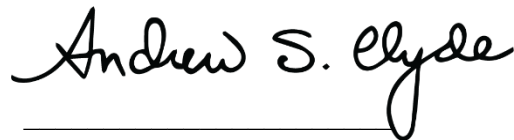
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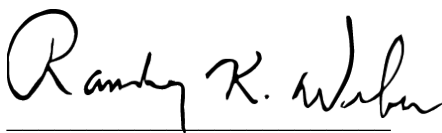
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