



THREE PILLAR STRATEGY

Violence Against Women Act Reauthorization 2018

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THE COUNTERPOINT

With this policy paper, Concerned Women for America does not attempt to address all the many issues the reauthorization of VAWA has raised. Rather, a Three Pillar Strategy is suggested to better prioritize and focus VAWA funds, programming, and other resources to uphold the Act's original intent: to reduce violence against women and to strengthen services and administer justice to women victims of violence¹. CWA's three pillars are as follows:

PILLAR I. *Strengthen VAWA Grants by Focusing Funds More Effectively on Needs of Women and Girls*

PILLAR II. *Redirect U.S. legislative Intent Back to Existing and Universally Accepted Civil Rights Law through VAWA Sex Non-Discrimination Language*

PILLAR III. *Provide Protections within VAWA for Service Organizations that Support Victims of Violence*

PILLAR I: Strengthen VAWA Grants by Focusing Funds More Effectively on Needs of Women and Girls

The funding reach of VAWA has expanded with each reauthorization, yet the focus of VAWA has drifted from original objectives of serving women victims of violence. In order to strengthen VAWA grants to effectively reach its original objectives, three actions are required: First, require greater accountability and prioritization in reducing the sexual assault kit backlog through the Debbie Smith Act. Second, enhance female genital mutilation penalties, education, interagency response, and state model legislation. And third, prevent further expansion of definitions of underserved populations to focus justice and support services on women and girls.

ACTION 1: Require Greater Accountability and Prioritization in Reducing Sexual Assault Kit Backlog through the Debbie Smith Act

According to the Centers for Disease Control's National Intimate Partner and Sexual Violence Survey, the number of women who experienced rape or attempted rape rose from 1.3 million in 2010 to 1.5

BREAK DOWN

Key Points

- ▶ The reach of VAWA has expanded with each reauthorization, yet its focus has drifted from original objectives; Strengthen VAWA grants by focusing more effectively on the needs of women and girls.
- ▶ Women in the U.S. are victims of violence at disproportionately higher levels than men and are "underserved" populations based on overwhelming statistical evidence.
- ▶ For over 50 years, under existing and universally-accepted civil rights law, sex non-discrimination has referred to decreasing inequality between biological males and females, based on historical and scientifically-documented discrimination.
- ▶ Gender identity terms have led to the unintended consequences of violating the privacy and safety of women and girls
- ▶ Faith-based providers who serve victims of violence should be protected from discrimination based on religion or belief.

million in 2015. Women and girls who are victims of sexual assault and who have undergone the invasive and arduous process of rape kit DNA collection deserve the justice and assurance that their kits will be accounted for and their evidence processed. Achieve this with accountability and prioritization.

Accountability: Require reporting of existing backlog and backlog clean up

Greater accountability is desperately needed in reporting existing rape kit backlog and the progress of backlog cleanup. After 15 years since the passage of the Debbie Smith Act and more than a billion dollars invested, the National Institute for Justice still does not know the answer to the most basic question of how many sexual assault kits remain untested.² The current magnitude of the rape kit backlog must be determined by requiring states to report their existing backlog and the progress they have made in cleaning up the backlog. State reporting should be required on a routine basis, and as a requirement to continue receiving Debbie Smith Act funds.

Although money and resources through the Debbie Smith Act have been directed to drastically reduce the nation's backlog of sexual assault kits, possibly "hundreds of thousands" of kits across the U.S. remain untested³ and unaccounted. In 2009, approximately 11,000 rape kits were discovered in a deteriorating, abandoned warehouse in Detroit.⁴ These rape kits were stockpiled, unopened and unprocessed for decades, some dating back to 1984. Another tragic example, recently reported from the Crisis Center Birmingham, shows a backlog of sexual assault kits collected between 1985 and 2016 (31 years) and reports that almost 86% of the kits have not been processed.⁵ In both of the examples above, sexual assault kits lay wasting for decades. Every woman, after going through the arduous, invasive process of data collection, deserves accountability and the assurance her case and her kit will be processed.

The National Institute for Justice's (NIJ) SAFE-ITR (Sexual Assault Forensic Evidence-Inventory, Tracking, and Reporting) program is a good example

of accountability. In 2017, NIJ awarded 11 grants to eight states, totaling \$5,205,513 under its SAFE-ITR program. SAFE-ITR specifically requires grant recipients to "use their own website to publicly report information ... every 60 days," including the number of rape kits in their possession, the number they have determined will not undergo testing, the number that have been submitted to their laboratory, and the number of rape kits that have already been tested.⁶

For example, in 2017 the Nevada Office of Attorney General received \$523,268 through SAFE-ITR and established the "End Nevada's Backlog" website (<http://endnevadasbacklog.ag.nv.gov/Home/Home/>). Women can go to this website to see the current status of the kits, DNA matches, and even the number of arrests made.

By contrast, grants awarded through the DNA Capacity Enhancement and Backlog Reduction (CEBR) program does not require recipients to track or post updates of their backlog cleanup. Although these awards totaled \$61,127,904 in 2017 through 131 grants that went to 49 states, D.C., and Puerto Rico,⁷ without an accountability measure, it is unclear whether these grants have been successful in reducing the backlog in these states.

A uniform system of accountability must be adopted to ensure Debbie Smith funds are efficiently used by grant recipients to clean up sexual assault kit backlog and bring justice to women throughout the U.S. The U.S. Government Accountability Office has preliminary findings and analysis on CEBR which may be helpful in designing a system of accountability.⁸

Suggested Language: Establish Uniform Definition of Backlog to Include Dates of Collection and Submission

As a priority, the term "backlog" must be clearly defined to ensure a uniform standard of measure for all grant recipients reporting backlog clean-up. Currently, there is no standard definition.

CWA recommends a uniform definition which includes a timeline beginning with the date of collection, not the date of submission to the lab. The National Institute for Justice (NIJ) defines "backlog"

as a kit not processed within 30 days of receipt in the laboratory. Although a helpful measure, a definition of “backlog” should also include a timeline beginning with the date the kit is collected, not the date it is submitted to the lab. According to the report from the Crisis Center Birmingham, out of the 3,944 sexual assault kits provided to Birmingham police, 3,391 were not even submitted to a lab for testing.

As in the case of Birmingham or Detroit, no kit should be forgotten and left to waste away. Every woman deserves the assurance her case and her kit will be processed. Therefore, a more comprehensive definition would be as follows: “A kit defined as ‘backlogged’ is a kit which has not been submitted to a laboratory within 30 days of the date of collection; In addition, a kit defined as ‘backlogged’ is a kit which has not been processed within 30 days of submission to the laboratory.”

Prioritization: Prioritize DNA processing of sexual assault kits of rape victims

Currently, the Debbie Smith Act does not retain its original focus on sexual assault. Instead, rape and sexual assault are among many crimes analyzed under the grant process, diluting its original intent and hindering the full elimination of the sexual assault kit backlog. Focus the Debbie Smith Act DNA Backlog Grant Program back toward its original objectives: the elimination of the backlog of sexual assault and rape kits. This will help to apprehend sexual assault perpetrators and achieve justice for women.

Although the processing of other types of crimes can increase the chance of getting DNA hits for perpetrators of sexual assault through CODIS (the Combined DNA Index System), the first priority of this program should be for the victims who have been waiting for justice for many years, often while enduring significant physical and psychological trauma.

Suggested Language: In order to prioritize rape kits with Debbie Smith Act funds, these actions can be taken to change language: Replace “including” with “prioritizing” under purposes (a) (2) and (8) of the Debbie Smith Act Backlog Elimination grant program.

ACTION 2: Enhance female genital mutilation (FGM) penalties, education, interagency response, and state model legislation.

Female Genital Mutilation (FGM) is practiced in the United States on the most vulnerable of our population – little girls. FGM is the partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons.⁹ It has no health benefits and is a form of gender-based violence that specifically targets women. It is internationally recognized as a violation of the fundamental human rights of women and girls. Girls who undergo FGM may face lifelong physical and psychological consequences.

Those who oppose increased FGM penalties posit that increasing penalties will drive the practice of FGM further underground and out of public and law enforcement view. This view is misinformed for two main reasons.

First, there is evidence that significant penalties can deter families from practicing FGM on their girls. In an ongoing federal trial in Michigan, a doctor allegedly performed FGM on up to 100 girls. Girls had been brought to Michigan by their families from Minnesota where there was no state anti-FGM legislation. In Minnesota at this time, a practitioner could get life in prison for FGM. This case highlights the fact that families were aware of existing legislation in Minnesota and took steps to evade it. It also indicates the need for strengthening federal anti-FGM legislation so that the penalty is strong enough to dissuade families from the practice. Additionally, advocates working with survivors have found anecdotally that when facing pressure from family or community members to submit their girls to FGM procedures, parents often use existing legislation against FGM as an excuse to not perform the procedure.¹⁰

Second, the Michigan case also shows that the practice of FGM is already clandestine by nature. In this case, the young girls were instructed to tell no one about the procedures performed on them. This practice is already very much underground; FGM advocates such as AHA Foundation believe that increasing the penalty could not drive it any

further underground than it already is, and individuals who violate the human rights of children should face a harsher sentence than the current maximum of up to five years imprisonment.

Suggested Language: H.R. 3317, the Stopping Abusive Female Exploitation (SAFE) Act, approved by the House last year, would increase the federal penalty of practicing FGM from five years to 15 years. This bill, along with additional provisions to support FGM educational resources for communities and professionals, coordinate interagency response to FGM, and facilitate development of state model legislation, are included in draft Senate reauthorization bill 5/26/2018.

ACTION 3: Prevent expansion of underserved populations to focus justice and support of VAWA on women and girls.

VAWA reauthorization of 2013¹¹ amended VAWA of 1994 by adding and expanding universal definitions of underserved populations. These additions included “sexual orientation or gender identity” and “actual or perceived ... gender identity, sexual orientation.”

In order to prevent continued expansion of underserved populations and restore focus on women and girls, the terms “sexual orientation, gender identity” should be removed from Sec. 3. Universal Definitions and Grant Condition (3g) Underserved Populations, from STOP Grants, and from Campus Violence. Replace the terms with language which reflects universally accepted and scientifically backed definitions of underserved populations and which does not elevate the safety, privacy, and interests of one identity group over another.

Gender identity terms allow men who “identify as women” to use VAWA funds and resources. This is problematic for three main reasons: First, women¹² in the U.S. are victims of violence at disproportionately higher levels than men and are “underserved” based on overwhelming statistical evidence. Second, gender identity terms lead to the unintended consequences of violating the privacy and safety of women and girls. And third, science does not support

assertions that men are, or can become, biological women and should not be treated as such by federal programming.

1. Women¹³ in the U.S. are victims of violence at disproportionately higher levels than men and are “underserved” based on overwhelming statistical evidence.

The Senate Report 112-153 of the VAWA Reauthorization 2011 reminds us that “...VAWA’s focus on violence against women appropriately reflects the disproportionate number of women who experience severe forms of domestic and sexual violence, and the disproportionately severe effects often confronted by female victims...”¹⁴ Although VAWA rightly stipulates that male victims of violence are not prohibited from benefiting from VAWA grants¹⁵, women have been historically targeted as an “underserved population” and the main recipients of VAWA resources based on need shown by overwhelming statistical, scientific and historical evidence. Although both women and men experience violence, a significantly greater number of women experience physical violence, sexual violence, and stalking in their lifetime:

- All forms of Violence¹⁶ 25% Women Compared to 10% Men¹⁷
- Rape¹⁸ 21.3% Women Compared to 2.6% Men¹⁹
- Stalking²⁰ 16% Women Compared to 5.6% Men²¹
- Contact Sexual Violence²² 43.6% of women (nearly 52.2 million) as compared to 24.8% of men²³
- In spite of federal programming, the number of women raped²⁴ rose by 3% between 2010 and 2015, from 18.3% to 21.3%²⁵

VAWA funds should be clearly focused on reducing violence against all women and not on expanding definitions of underserved populations to focus on particular interest groups. The need to provide protected status for the LGBT community as an underserved population as defined by Sec 3 Underserved Populations has not been clearly demonstrated, as VAWA serves all victims of violence.

In 2012, the House Report 112-480²⁶ for VAWA Reauthorization 2011 explained “there is nothing in current law or H.R. 4970 that prevents LGBT victims of domestic violence from receiving federally-funded resources.” Furthermore, the report stated, “there is little data to support providing protected status to the LGBT community.”^{27, 28}

The Senate Report 112-153 for VAWA Reauthorization 2011 posited that the LGBT community needed protected status based on a survey done in 2009 to “assess the state of victim assistance for LGBTQ victims of crime.” However, only 684 agencies out of 10,000 responded to the survey, a low response rate of only 6.48%. In addition, this survey only assessed whether or not LGBT-specific services were present at these agencies, not whether or not LGBT persons were present in high numbers at shelters and “had difficulty accessing traditional services because of their sexual orientation or gender identity.”²⁹ In fact, the survey report itself uses quotes from the agencies that show that all victims of violence are being treated equally:

- “We treat everyone the same.”
- “How can we single out one section of the population and show favoritism?”
- “Our population being served are predominantly women, ages 14-61, and sexual orientation has never been a concern when dealing with rape victims.”
- “The challenges to serve victims are immense, and we endeavor to be available to all, to encourage their participation, and to provide services without categorization or preference, no matter who they are.”³⁰

The survey report further states that only 6% of respondents (38 out of 684 agencies) reported that the majority of their victims were LGBT, and acknowledges that “... intimate partner violence occurs in the relationships of LGBT people at about the same rate as in heterosexual relationships, or in approximately 25 to 33 percent of all relationships.”³¹

2. Gender identity terms lead to unintended consequences of violating the privacy and safety of women and girls

Women and their children seeking haven in domestic violence shelters need sex-segregated spaces

to physically and mentally heal from the trauma of violence, which in the vast majority of situations has been perpetrated by males.³² Sexual orientation and gender identity terms in federal policy allow men who identify as women to invade female-only spaces such as women’s safe harbor domestic violence shelters, female locker rooms, and bathrooms. This threatens a woman’s safety, privacy, and her right to not be seen in a vulnerable state of undress by a male.

Although VAWA provides an exception for both sex-segregated and sex-specific programming,³³ the DOJ’s interpretation of this can be harmful for domestic violence shelters that make housing determinations based on biological sex. The DOJ’s Frequently Asked Questions: Nondiscrimination Grand Condition in the VAWA Reauthorization Act of 2013³⁴ explains:

- that “Both ‘sex-segregated’ and ‘sex-specific’ programming places individuals in a position to ‘choose’ to identify with a particular sex” (#11, page 6)
- and “a recipient that operates a sex-segregated or sex-specific program should assign a beneficiary to the group or services which corresponds to the gender with which the beneficiary identifies ...” (#14, page 8)
- and “best practices dictate that the recipient should ask a transgender beneficiary which group or service the beneficiary wishes to join. The recipient may not, however, ask questions about the beneficiary’s anatomy or medical history or make burdensome demands for identity documents.” (#14, page 9)

The above interpretations mean that a man who “chooses” to identify as a woman may join either a female or male program, as he decides, making VAWA’s provision for ‘sex-segregated’ or ‘sex-specific’ programs useless. In addition, the rights of a woman to be segregated from a male are negated by the following phrase:

- “A recipient may not make a determination about services for one beneficiary based on the complaints of another beneficiary when those complaints are based on gender identity.” (#14, page 9)

An example of the problem of biological males seeking access into female-segregated shelters is the Downtown Hope Center in Anchorage, Alaska,³⁵ a shelter for abused and homeless women. In early 2018, a man identifying as a woman filed a complaint with the human rights commission against the shelter for not allowing him to enter the shelter; this case is now in litigation.³⁶

3. Science does not support assertions that men are, or can become, biological women and should not be treated as such by federal programs

The inclusion of “gender identity” in “underserved populations” allows males who “identify as women” or “gender-nonconforming” to use the funds, services, and facilities of women. However, there is absolutely no scientific evidence to support activist claims that transgender men who identify as women are actually biological women. Rather, as the extensive research of Dr. Ryan Anderson clearly demonstrates, the results of sex reassignment surgery, cosmetic surgeries, and cross-sex hormone treatment “don’t change the deeper biological reality, which begins with our DNA and fetal development, unfolding in every bodily system.”³⁷ And as Dr. Paul McHugh, former chief of psychiatry at Johns Hopkins, states, “transgendered men do not become women” but are only “feminized men ... counterfeits or impersonators of the sex with which they ‘Identify.’”³⁸

Although some claim that transgender males are actually women, and not merely men “identifying as women,” the “available evidence from brain imaging and genetics does not demonstrate that the development of gender identity as different from biological sex is innate.”³⁹ Rather, the current political and cultural “shift in terminology and definitions related to discordant gender identity is a result of politics, not science”⁴⁰ and “were not initiated through the result of scientific information but rather the result of cultural changes fueling political interest groups within professional organizations.”⁴¹

Suggested Language: 1) The paragraph of “Underserved Populations” in Sec. 3 can be replaced with the following: “UNDERSERVED POPULATIONS: The term ‘underserved populations’ means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, race or ethnicity, special needs (such as language barriers, disabilities, alienage status or age) and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.”

2) In Title I Sec. 101. Stop Grants (19): Remove paragraph

3) In Title III. Sec. 304. Campus Sexual Violence, Domestic Violence, Dating Violence, and Stalking (a. 1.B.ii.i.): Remove the terms “sexual orientation, gender identity”

Pillar II: Redirect U.S. Legislative Intent Back to Existing and Universally Accepted Civil Rights Non-Discrimination Law Through VAWA

During the past 10 years, multiple U.S. agencies and organizations have worked with the support of various interest groups to shift the original intent of sex discrimination away from referring to discrimination against women and girls to include the terms “gender identity” and “sexual orientation.” This shift has been reflected within the public-school system, the Department of Justice, the Department of Housing for Urban Development, the U.S. Agency for International Development, the U.S. Department of State, and others.

The inclusion of sexual orientation and gender identity terms undermines congressional intent of the 1964 Civil Rights Act and the Education Amendment of 1972 and reflects the desires of a particular group seeking special treatment, rather than a straightforward application of law to protect discriminated populations. In order to maintain the original intent of civil rights law in terms of sex discrimination, the action should be taken to remove the terms “sexual orientation” and “gender Identity” from Sec. (A) Civil Rights-Nondiscrimination within VAWA.

ACTION 1: Remove "... actual or perceived ... "gender identity" and "sexual orientation" in Sec. 3. Universal Definitions and Grant Conditions (13) (A) Civil Rights—Nondiscrimination.

Nothing prevents any victim, regardless of sexual orientation or gender identity, from receiving federal funds or support under current civil rights law. The Civil Rights Act of 1964 (Title II) states "All Persons should be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of race, color, religion, sex or national origin." In the same way, Title IX of the Education Amendment of 1972, Sec. 1681, states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. ..."

With the addition of the terms "sexual orientation" and "gender identity," Civil Rights non-discrimination law reflects the desires and interests of particular groups, rather than a straightforward application of law to protect discriminated populations. This is problematic for three main reasons: One, under existing and universally accepted civil rights law, sex non-discrimination refers to decreasing inequality between biological males and females due to historical and documented discrimination; two, redefining "sex" as "gender identity" violates the rights, privacy, and safety of women and girls; and three, sexual orientation and gender identity discrimination language often comes into conflict with freedom of religion, conscience, and speech, imposing significant cultural and economic burdens on individuals.

Furthermore, the addition of the terms "actual or perceived" imply a subjective application of law regarding biological sex, color, race, and national origin where non-discrimination will be based on personal subjectivity rather than measurable standard or criteria.

1. Under existing and universally accepted civil rights law, sex non-discrimination refers to decreasing inequality between biological males and females based on historical and documented discrimination

For over 50 years, the original intent of civil rights law with regards to "sex" has referred to prohibiting legally-imposed and culturally-prevalent overt discrimination against women and girls (on the basis of biological sex) and to promoting their equality. In the original text of Title IX, the word "sex" was used to refer to the biological and physiological differences between men and women. In response to the Obama Administration's attempt to redefine "sex" as "gender identity" within national school policy, Judge Reed O'Connor for the Northern District of Texas wrote that Title IX federal education law "is not ambiguous" about the definition of sex as "the biological and anatomical differences between male and female students as determined at their birth."⁴²

Sen. Birch Bayh introduced Title IX into the Senate. In doing so, he explained that its purpose was to fight the documented "continuation of corrosive and unjustified discrimination against women in the American educational system," which often led to decreased job success and economic opportunities. Sen. Birch said in this regard that, "The field of education is just one of many areas where differential treatment [between men and women] has been documented but because education provides access to jobs and financial security, discrimination here is doubly destructive for women. Therefore, a strong and comprehensive measure is needed to provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women."⁴³

With regards to sexual orientation and gender identity, it is fair to say that an "evidence of discrimination (which is) comparable to the evidence used to justify passage of our civil rights laws on race and sex has not been demonstrated."⁴⁴ In most cases, "more tailored policies (can) address the mistreatment of people who identify as LGBT."⁴⁵

In fact, evidence to the contrary regarding LGBT discrimination has been shown; an example is in potential economic or workforce discrimination. A report based on tax return information, from the U.S. Treasury in 2016, shows opposite-sex couples earn on average \$62,000 less per year than gay male couples, and \$11,000 less per year than lesbian couples.⁴⁶ In addition, the Human Rights Campaign website reports in 2017 that of Fortune 500 companies, “the vast majority” (89%) prohibit discrimination on the basis of sexual orientation; 66% prohibit discrimination based on gender identity; and, “the majority (66%) provide domestic partner health insurance benefits to their employees.”⁴⁷

Although activists claim “widespread” and “rampant” discrimination, these claims are greatly distorted. As Dr. Anderson’s research has demonstrated, the vast majority of cases involved “vendors opposed to serving same-sex weddings and professionals and nonprofits convinced that children ought to have a mother and father; that marriage unites husband and wife, or that sex is for marriage.” The cases have not demonstrated “people or organizations treating people who identify as LGBT differently just because they identify as LGBT. The fact is that the strongest grounds for enacting policy to ensure that people who identify as LGBT have access to basic services are rare to vanishing.”⁴⁸

2. Expanding or redefining “sex” as “gender identity” violates the rights, privacy, and safety of others

On May 13, 2016, the Obama Administration arbitrarily redefined “sex” in Title IX to include “gender identity” through policy guidelines sent to public schools by the Departments of Justice and Education. This redefinition required schools to allow transgender students to access sex-specific facilities such as locker rooms, dormitories, bathrooms, and hotel rooms during field trips, based on their own self-declared sexual identities. This action elevated the interests of transgender students over the rights, privacy, interests, and safety of other students as both biological boys and girls were denied true sex-specific and sex-segregated facilities and sleeping accommodations.

U.S. District Judge Reed O’Connor ruled on August 21, 2016, that the Obama Administration’s redefinition of sex under Title IX was unlawful and blocked it from going into effect. Under the Trump Administration, the Departments of Justice and Education formally rescinded the “gender identity” policy guidance on February 22, 2017.⁴⁹

3. Sexual orientation and gender identity discrimination language often comes into conflict with freedom of religion, conscience, and speech, imposing significant cultural and economic burdens on individuals

“Sexual orientation and gender identity” terms are being used in legal processes to elevate LGBT status above the universal human rights of all people. In this way, the logic of non-discrimination is often abused and twisted to create religious discrimination. Examples of this include:

- *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S.)
- *Ingersoll v. Arlene’s Flowers* (U.S.)
- *Ake Green case with Swedish Supreme Court*
- *Law Society of British Columbia v. Trinity Western University* (Canada)

The Department of Justice interprets VAWA’s non-discrimination language to include employment practices. This means that a faith-based organization cannot require employees to adhere to conduct standards consistent with their religious identities if the organization receives VAWA funds. Because of this, a VAWA grantee organization could be sued if the organization maintains employee conduct standards and serves victims in a manner consistent with their religious beliefs. It also implies the DOJ may not issue VAWA awards to faith-based organizations who will maintain these conduct standards.⁵⁰

Suggested Language: Remove and replace the paragraph within Sec. 3. Universal Definitions and Grant Conditions (13) (A) Civil Rights—Nondiscrimination with “(A) Nondiscrimination.—No person in the United States shall, on the basis of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Violence Against Women Act of 1994 (title IV of Public Law ...); the Violence Against Women Act of 2000 (division ...) the Violence Against Women and Department of Justice Reauthorization Act of 2005 (title IX ...) the Violence Against Women Reauthorization Act of 2013, and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.”

The Family Violence and Prevention Services 42 USC 10406: formula grants to States is also a good example of language that could be used. Stated under: (c) Grant conditions (2) Discrimination prohibited (A) Application of civil rights provisions:

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), programs and activities funded in whole or in part with funds made available under this chapter are considered to be programs and activities receiving Federal financial assistance.

And under (B) Prohibition on discrimination on basis of sex, religion (i) In general

No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available

under this chapter. Nothing in this chapter shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual’s sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal or safe operation of that particular program or activity.

Pillar III: Provide Protections in VAWA for Support Organizations that Serve Victims of Violence

VAWA Sec 3 omits necessary language to protect the conscience freedoms of faith-based providers serving victims of violence and human trafficking. This is problematic, as seen in the case of the U.S. Conference of Catholic Bishops (USCCB), an organization which does not offer or refer victims of trafficking to abortion family planning services.

In 2011, after five years of providing food, housing, clothing, medical services, counseling, legal assistance, education, and employment services to human trafficking victims in over 44 states, the USCCB was denied a grant award by the Department of Health and Human Services. HHS’s grant application that year indicated a new preference for grantees offering “the full range of legally permissible gynecological and obstetric care,” representing favorability to organizations that refer victims for abortion services.⁵¹

ACTION 1: Add a religious liberty and conscience amendment to Sec.3 that prohibits discrimination against providers based on religion or belief

In order to protect faith-based providers, the action needed is to add a religious liberty and conscience amendment which will prohibit discrimination against providers based on their religion or belief.

Suggested Language: Language can be as follows “(C) Exemption for Faith-Based Organizations—A faith-based organization that carries out, or desires to carry out, a program or activity described in subparagraph (A) shall be exempt from the requirements under that subparagraph to the extent that complying with such requirements would burden the organization’s exercise of religion.”

ENDNOTES

- ¹ The U.S. Department of Justice. Office on Violence Against Women. About the Office. Web accessed October 29, 2018 at <https://www.justice.gov/ovw/about-office>.
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- ³ Reilly, Steve. July 17, 2015. USA Today. “No Action on Rape Kits Despite New Law”. Web accessed November 5, 2018 at <https://www.usatoday.com/story/news/2015/07/17/1b--rape-kit-funding-not-being-spent--fix-problem/29902283/>
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- ⁶ LaPort, G. et al. National Institute of Justice. May 2017. Report Forensic Science. Fiscal Year 2016 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities. U.S. Department of Justice Office of Justice Programs.
- ⁷ National Institute of Justice. NIJ Home Page. Funding and Awards. Awards Related to: DNA Capacity Enhancement and Backlog Reduction (CEBR) Program. <https://nij.gov/funding/awards/pages/awards-list.aspx?solicitationid=4944>
- ⁸ United States Government Accountability Office. July 18, 2018. DNA Evidence: Preliminary Observations on DOJ’s DNA Capacity Enhancement and Backlog Reduction Grant Program. Testimony Before the Committee on the Judiciary, U.S. Senate. Statement of Gretta L. Goodwin, Director, Homeland Security and Justice. Web accessed November 7, 2018 at <https://www.gao.gov/products/GAO-18-651T>
- ⁹ As defined by the World Health Organization.
- ¹⁰ Source: AHAFoundation; See also AHAFoundation.org
- ¹¹ Public Law 113-4 Violence Against Women’s Act of 2013.
- ¹² “Women” refers to female biological sex.
- ¹³ “Women” refers to female biological sex.
- ¹⁴ Senate Report 112-153. Violence Against Women Reauthorization Act 2011. March 12, 2012. Web accessed November 5, 2018 at <https://www.congress.gov/congressional-report/112th-congress/senate-report/153/1?r=49&overview=closed> (p. 5; see also 21)
- ¹⁵ Violence Against Women Act of 1994 stipulates under (b) Grant Conditions (8) “NONEXCLUSIVITY. —Nothing in this title shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this title.
- ¹⁶ All forms of violence surveyed including contact sexual violence, physical violence, and/or stalking by an intimate partner and some form of intimate partner violence-related impact.
- ¹⁷ National Intimate Partner and Sexual Violence Survey. Data Report 2015. (P. 7) Web accessed July 3, 2018, at <https://www.cdc.gov/violenceprevention/nisvs/index.html>.
- ¹⁸ Rape is any completed or attempted unwanted vaginal (for women, oral, or an anal penetration through the use of physical force (such as being pinned or held down, or by the use of violence) or threats to physically harm and includes times when the victim was drunk, high, drugged, or passed out and unable to consent. Rape is separated into three types: completed forced penetration, attempted forced penetration, and completed alcohol-or drug-facilitated penetration. Among women, rape includes vaginal, oral, or anal penetration by a male using his penis. It also includes vaginal or anal penetration by a male or female using their fingers or an object. Among men, rape includes anal or oral penetration by a male using his penis. It also includes anal penetration by a male or female using their fingers or an object.
- ¹⁹ National Intimate Partner and Sexual Violence Survey. Data Report 2015. (Page 2, Figure 1 and Page 3, Figure 2) Web accessed July 3, 2018 at <https://www.cdc.gov/violenceprevention/nisvs/index.html>
- ²⁰ Stalking victimization involves a pattern of harassing or threatening tactics used by a perpetrator that is both unwanted and causes fear or safety concerns in the victim.
- ²¹ National Intimate Partner and Sexual Violence Survey. Data Report 2015. (Page 5) Web accessed July 3, 2018 at <https://www.cdc.gov/violenceprevention/nisvs/index.html>.
- ²² Contact Sexual Violence: includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact.
- ²³ National Intimate Partner and Sexual Violence Survey. Data Report 2015. (Page 2, Figure 1 and Page 3, Figure 2) Web accessed July 3, 2018 at <https://www.cdc.gov/violenceprevention/nisvs/index.html>.
- ²⁴ Includes completed and attempted rape and is the number who were in the past 12 months before the survey.

- ²⁵ CDC National Intimate Partner and Sexual Violence Survey (2010, pages 18), (2015, page 15).
- ²⁶ For the House-passed H.R. 4970
- ²⁷ House Report 112-480—Violence Against Women Reauthorization Act of 2011. May 15, 2012 (P. 50) Web accessed November 5, 2018 at <https://www.congress.gov/congressional-report/112th-congress/house-report/480/1>
- ²⁸ In addition, VAWA Reauthorization 2013 provides that “underserved populations” can be “any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.”
- ²⁹ Senate Report 112-153. Violence Against Women Reauthorization Act 2011. March 12, 2012. Web accessed November 5, 2018 at <https://www.congress.gov/congressional-report/112th-congress/senate-report/153/1?r=49&overview=closed>, p. 21.
- ³⁰ Why it Matters: Rethinking Victim Assistance for Lesbian, Gay, Bisexual, Transgender, and Queer Victims of Hate Violence & Intimate Partner Violence. A Joint Policy Report by the National Center for Victims of Crime and the National Coalition of Anti-Violence Programs. March 2010.
- ³¹ Ibid.
- ³² Among women who experienced rape, physical violence, and/or stalking in the context of an intimate relationship, the majority of bisexual and heterosexual women (89.5% and 98.7%, respectively) reported only male perpetrators (data not shown). More than two-thirds of lesbian women (67.4%) identified only female perpetrators. Statistical testing to compare sex of perpetrator across all sexual orientations was not conducted, (page 27) National Intimate Partner and Sexual Orientation Survey 2010.
- ³³ (13 Civil Rights)(B) EXCEPTION states “— If sex segregation or sex-specific programming is necessary to the essential operation of a program, nothing in this paragraph shall prevent any such program or activity from consideration of an individual’s sex. In such circumstances, grantees may meet the requirements of this paragraph by providing comparable services to individuals who cannot be provided with the sex-segregated or sex-specific programming.”
- ³⁴ U.S. Department of Justice, Frequently Asked Questions, April 9, 2014, Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013. Web accessed July 20, 2018 at <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>
- ³⁵ <https://firstliberty.org/cases/clarkson/> and <https://www.heritage.org/gender/commentary/voters-anchorage-can-protect-womens-privacy-ballot-initiative>
- ³⁶ Note: it is not known whether or not Hope Center receives VAWA funds
- ³⁷ Anderson, Ryan (2018) *When Harry Became Sally*. Encounter Books. New York, NY., p.99.
- ³⁸ McHugh, Paul (2015) “Transgenderism: A Pathogenic Meme” Public Discourse June 10, 2015.
- ³⁹ In Anderson (2018) p. 108, taken from Lawrence S. Mayer and McHugh, Paul. (2016) “Sexuality and Gender Findings from the Biological, Psychological, and Social Sciences” Special Report, *New Atlantis* 50 (Fall 2016):8.
- ⁴⁰ Anderson, Ryan (2018) *When Harry Became Sally*. Encounter Books. New York, NY.
- ⁴¹ Declaration of Allan M. Josephson, M.D., U.S. District Court, Middle District of North Carolina, Case I:16-cv-00425-TDS-JEP, Exhibit J.
- ⁴² Weber, Paul J. Texas judge halts federal transgender health protections. January 01, 2017. Web accessed at October 3, 2018 at: <https://apnews.com/030eb949b217439e82c8a008b225c8bb>
- ⁴³ Justia. Title IX Legal Manual. Synopsis of Purpose of Title IX. Web accessed Oct 3, 2018 at: <https://www.justia.com/education/docs/title-ix-legal-manual/synopsis-of-purpose-of-title-ix/>
- ⁴⁴ Anderson, Ryan T. (2017) *How to Think About Sexual Orientation and Gender Identity (SOGI) Policies and Religious Freedom*. The Heritage Foundation Backgrounder. No 3194. February 13, 2017.
- ⁴⁵ Anderson (2017) *How to Think About Sexual Orientation and Gender Identity*.
- ⁴⁶ Anderson, Ryan (2017) *How to Think About SOGI Policies*, and Robin Fisher, Geof Gee, and Adam Looney, “Joint Filing by Same-Sex Couples After Windsor: Characteristics of Married Tax Filers in 2013 and 2014,” U.S. Department of the Treasury, Office of Tax Analysis, Working Paper No. 108, August 2016, <https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-108.pdf> (accessed February 6, 2017).
- ⁴⁷ Human Rights Campaign. LGBTQ Equality at the Fortune 500. Web accessed September 27, 2018 at: <https://www.hrc.org/resources/lgbt-equality-at-the-fortune-500>
- ⁴⁸ Anderson (2017) *How to Think About Sexual Orientation and Gender Identity Policies*.
- ⁴⁹ Peters, J. Becker, J. Davis, J. Trump Rescinds Rules on Bathrooms for Transgender Students. *New York Times*. February 22, 2017. Web accessed October 3, 2018. <https://www.nytimes.com/2017/02/22/us/politics/devos-sessions-transgender-students-rights.html>
- ⁵⁰ U.S. Department of Justice, Frequently Asked Questions, April 9, 2014, Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013. Web accessed July 20, 2018 at <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>
- ⁵¹ U.S. Conference of Catholic Bishops <http://www.usccb.org/news/2013/13-046.cfm>

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