

July 10, 2026

Director Russell Vought  
The Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Dear Director Vought:

This letter comments on the Office of Management and Budget’s proposed rule, “Regulation for Federal Financial Assistance” (OMB-2026-0034), published in the *Federal Register* on May 29, 2026. Diversity, equity, and inclusion (DEI) policies often use racial preferences, which violate state and federal civil rights laws when public officials apply them. The proposed rule would bar federal taxpayer funding for grants to entities that use DEI policies or promote gender-related causes. This change is appropriate and lawful.

The proposed rule prohibits grant recipients from implementing policies that violate federal anti-discrimination laws, policies that recipients such as college and university officials execute through DEI offices. For example, college administrators nationwide advocated in favor of racial preferences by writing amicus briefs in favor of such preferences when applied to college admissions in the 2023 U.S. Supreme Court case *Students for Fair Admissions v. Harvard*.<sup>1</sup> When the High Court ruled college officials’ use of racial preferences as a deciding factor in admissions decisions was unconstitutional, some college administrators decried the ruling, calling it “personally painful,” with others saying they were “deeply disheartened.”<sup>2</sup> The amicus briefs filed prior to the ruling and the statements that followed exemplify the commitment across higher education for promoting racial bias. Postsecondary institutions that operate a DEI office or use racial preferences for hiring or job promotion should not be eligible for federal grants to support these purposes.

In fact, some advocates of racial preferences have stated plainly that they oppose the Civil Rights Act of 1964. Author and Howard University professor Ibram X. Kendi said the passage of this civil rights statute, the result of decades of sacrifice by Americans from different

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<sup>1</sup> For a discussion of these briefs, see Jonathan Butcher, *The Polarization Myth: America’s Surprising Consensus on Race, Schools, and Sex* (New York: Encounter Books, 2025), 37. See also *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

<sup>2</sup> Butcher, *The Polarization Myth*, p. 38.

racism and all walks of life, “spurred racist progress.”<sup>3</sup> He said the “legacy of the Civil Rights Act’s failures abound” and advocated for reparations without specific limits or provisions describing his policy solution. Postsecondary institutions around the country have celebrated Kendi’s work and paid him speaking sums worth five figures or more.<sup>4</sup> Here again, institutions that actively work against state and federal civil rights laws should not be eligible for federal grant spending to support such projects.

The *Students for Fair Admissions* ruling has applications beyond college student acceptance. Since the ruling, at least one state court has applied the opinion to college operations outside of student admissions and found violations of civil rights laws and the U.S. Constitution. In June 2026, the Wisconsin Supreme Court ruled that a higher education scholarship option offered exclusively to Black, Hispanic, American Indian, Laotian, Cambodian, and Vietnamese students violates the Fourteenth Amendment to the Constitution.<sup>5</sup> This finding is consistent with the *Students for Fair Admissions*’ opinion which states, “Eliminating racial discrimination means eliminating all of it.”<sup>6</sup> The proposed rule change, then, is consistent with federal and state court rulings against the use of racial preferences, including but not limited to admissions decisions.

The proposed rule change also “give[s] notice that executive branch agencies will no longer...subsidize projects or activities promoting gender ideology, including those seeking to replace the concept of biological ‘sex’ with a divisive, unstable, and subjective concept of ‘gender identity.’” This change is also welcome and supported by research demonstrating that so-called gender choices do not improve an individual’s mental health.

As I wrote in my book, *The Polarization Myth: America’s Surprising Consensus on Race, Schools, and Sex*<sup>7</sup>,

The effect of administering puberty blockers to individuals to treat depression found mixed results. Researchers, however, found that 92 percent of individuals who used puberty blocking interventions “progressed to receiving gender affirming hormone therapy,” which means puberty blockers may not address any significant medical issues but are likely to be the first step on the path to more significant medical treatments.

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<sup>3</sup> Ibram X. Kendi, “The Civil Rights Act Was a Victory Against Racism. But Racists Also Won,” The Washington Post, July 2, 2017, <https://www.washingtonpost.com/news/made-by-history/wp/2017/07/02/the-civil-rights-act-was-a-victory-against-racism-but-racists-also-won/>.

<sup>4</sup> See Parker Jackson, “Uncovered: ASU’s \$35K Payment to DEI Demagogue Ibram X. Kendi...for 1-Hour Speech,” The Goldwater Institute, March 19, 2024, <https://www.goldwaterinstitute.org/uncovered-asus-35k-payment-to-dei-demagogue-ibram-x-kendi-for-1-hour-speech/> and Andrew Mark Miller, “University of Virginia Paid CRT Proponent Ibram Kendi More than \$500 Per Minute for Lecture: Report,” FoxNews, February 13, 2022, <https://www.foxnews.com/politics/university-virginia-paid-crt-proponent-ibram-kendi-500-per-minute-lecture-report>.

<sup>5</sup> Konkanok Rabiebn, et al., v. Higher Educational Aids Board, Wisconsin State Supreme Court, Jun 18, 2026, <https://www.wicourts.gov/sc/order/DisplayDocImage.pdf?docId=1135104>.

<sup>6</sup> *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*.

<sup>7</sup> Butcher, *The Polarization Myth*, p. 110-111.

Another study released in early 2025 found inconclusive results from the use of certain hormone treatments, again demonstrating that medical professionals do not know enough about the effects of these treatments to confidently prescribe them.<sup>8</sup>

The research is still coming. In 2025, The Journal of Sexual Medicine published by Oxford University released a study that found, ‘Gender-affirming surgery, while beneficial in affirming gender identity, is associated with increased risk of mental health issues, underscoring the need for ongoing, gender-sensitive mental health support for transgender individuals’ post surgery.’<sup>9</sup> Translation: patients should not expect surgery that alters their reproductive organs to resolve depression or anxiety, and once they undergo the procedure, they will need more counseling to affirm their decision.

In what is known as the Cass Report from the United Kingdom—a report led by the former president of the Royal College of Pediatrics and Child Health—the authors concluded, “Our current understanding of the long-term health impacts of hormone interventions is limited and needs to be better understood.”<sup>10</sup> In fact, research finds that in 80-95 percent of cases of youth confused about their sex, the confusion resolves naturally as students enter adulthood.<sup>11</sup> Federal agencies should not use taxpayer spending to advance such practices.

Furthermore, in June 2026, the High Court ruled in *West Virginia v. B.P.J.* that “the term ‘sex’ in Title IX...cannot plausibly be interpreted to refer to anything other than biological sex” and that there are “inherent physical differences between biological men and biological women.”<sup>12</sup> For at least these reasons, Americans’ taxpayer spending should not endorse nor support initiatives that promote the false idea that a person can choose their “gender” or that there are more than two sexes.

Finally, disparate impact theory also violates civil rights statutes when government personnel design and apply public policy based on this theory. As I wrote with Hans von Spakovsky in 2020, “Disparate impact is the dubious approach to civil rights enforcement that

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<sup>8</sup> Miroshnychenko A., Ibrahim S., Roldan Y., et al., “Gender affirming hormone therapy for individuals with gender dysphoria aged <26 years: a systematic review and meta-analysis,” *Archives of Disease in Childhood*, January 2025, doi: 10.1136/archdischild-2024-327921.

<sup>9</sup> Joshua E. Lewis et al., “Examining Gender-Specific Mental Health Risks after Gender-Affirming Surgery: A National Database Study,” *The Journal of Sexual Medicine*, February 25, 2025, <https://academic.oup.com/jsm/advance-article-abstract/doi/10.1093/jsxmed/qdaf026/8042063?redirectedFrom=fulltext>.

<sup>10</sup> Cass, H., “Independent review of gender identity services for children and young people: Final report,” 2024, <https://cass.independent-review.uk/home/publications/final-report/>.

<sup>11</sup> Emilie Kao, “Safeguarding Parental Rights and Protecting Children from Federally Mandated Gender Ideology,” *The Heritage Foundation Backgrounder* No. 3744, January 10, 2023, [https://www.heritage.org/sites/default/files/2023-01/BG3744\\_0.pdf](https://www.heritage.org/sites/default/files/2023-01/BG3744_0.pdf); Jay W. Richards, Ph.D. and Emilie Kao, “California Attacks Parents’ Rights Under the Guise of Medical Care,” *The Heritage Foundation*, September 30, 2022, <https://www.heritage.org/gender/commentary/california-attacks-parents-rights-under-the-guise-medical-care> in Butcher, *The Polarization Myth*, p. 109.

<sup>12</sup> *West Virginia v. B.P.J.* 609 U.S. \_\_ (2026).

claims that an entirely neutral policy that does not discriminate on its face, is not intended to discriminate, and does not actually treat individuals differently based on their race still constitutes illegal racial discrimination if it has a ‘disproportionate’ statistical effect among different racial and ethnic groups.”<sup>13</sup> This policy results in officials keeping racial quotas for programs such as school discipline, for example, the subject of my report. Federal officials should not award grants for initiatives or programs that use disparate impact theory.

This proposed rule protecting civil rights, recognizing biological differences in the sexes, and rejecting the racial bias caused by disparate impact is a crucial clarification of federal policy. This administration has identified how civil rights violations can occur through federal grant spending, and the rule change is a necessary correction.

Sincerely,

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Acting Director and Will Skillman Senior Research Fellow,  
Center for Education Policy  
The Heritage Foundation

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<sup>13</sup> Hans von Spakovsky and Jonathan Butcher, “Misusing ‘Disparate Impact’ to Discriminate Against Students in School Discipline,” Heritage Foundation Backgrounder No. 271, September 29, 2020, p. 1, [https://www.heritage.org/sites/default/files/2020-09/LM271\\_0.pdf](https://www.heritage.org/sites/default/files/2020-09/LM271_0.pdf).