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*Submitted via regulations.gov*

**RE: Public Comment in Response to Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test [Docket No. USBC–2023–0007]**

On behalf of the undersigned 187 organizations committed to researching and advancing the rights and well-being of lesbian, gay, bisexual, transgender, queer, intersex, and other sexual and gender minority (LGBTQI+) people in the United States, we write regarding a proposal issued by the U.S. Census Bureau (the “Bureau”) to conduct a test of sexual orientation and gender identity (SOGI) measures on the American Community Survey (the “ACS”).<sup>1</sup>

We believe it is critical that the federal government’s data collection efforts consistently include measures sufficient to identify the unique needs and experiences of LGBTQI+ communities. Such data should always be collected in a safe and secure manner, in accordance with best practices and evidence-based research on this subject, and in a way that supports the development of programs, policies, and strategies that could improve LGBTQI+ people’s well-being—including by addressing widespread stigma and discrimination that LGBTQI+ communities have historically faced and is currently on the rise nationwide. Given the invaluable and unique role that its data on the social, economic, housing, and demographic characteristics of the American population play in the development of our nation’s policies, programs, and funding decisions, the ACS in particular should enhance its collection of quality, accurate information on LGBTQI+ populations.

The ACS currently collects information on same-sex couples who are cohabitating.<sup>2</sup> This measure captures only about one in six of all LGBTQI+ people in the U.S.,<sup>3</sup> since single LGBQ people and transgender and intersex people cannot be identified at all through the existing relationship question. We therefore write to offer our strong support for the 2024 ACS Sexual Orientation and Gender Identity Test (the “Proposed Test”). The results of this test could advance the inclusion of SOGI measures on the ACS that would allow respondents to self-identify as LGBTQ+. Doing so is critical to improving the government’s enforcement of civil rights laws,

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<sup>1</sup> Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test, 88 Fed. Reg. 64,404 (Sept. 19, 2023).

<sup>2</sup> Zachary Scherer, *Number of Same-Sex Couple Households Exceeded 1 Million in 2021*, CENSUS.GOV (Nov. 22, 2022), <https://www.census.gov/library/stories/2022/11/same-sex-couple-households-exceeded-one-million.html>.

<sup>3</sup> Caroline Medina & Lindsay Mahowald, *Collecting Data About LGBTQI+ and Other Sexual and Gender-Diverse Communities*, CTR. FOR AM. PROGRESS (May 24, 2022), <https://www.americanprogress.org/article/collecting-data-about-lgbtqi-and-other-sexual-and-gender-diverse-communities/>.

shaping evidence-based policymaking, and designing programs and services that effectively meet the needs of LGBTQI+ communities.

Below and in support of the Proposed Test, we provide:

- A summary of research indicating that LGBTQI+ people are a sizeable population within the U.S. that experiences discrimination and disparities when compared to their non-LGBTQI+ counterparts;
- A review of relevant law supporting the addition of sexual orientation, gender identity, and variations in sex characteristics (SOGISC) measures to the ACS in furtherance of agencies' civil rights enforcement and activities to advance equity; and
- An overview of existing research on collecting demographic data on LGBTQI+ populations, including specifically on the measures proposed here by the Bureau.

We conclude by offering brief recommendations for additional future research the Bureau should conduct to ensure that ACS data continue to grow in robustness, inclusiveness, and accuracy in capturing the experiences of America's diverse communities and informing effective policies and programs that advance equity for all.

## **I. Existing Research on LGBTQI+ Populations**

### *Demographics of LGBTQI+ People*

LGBTQI+ people are a growing population in the U.S., consisting of various subpopulations that reflect the breadth of diversity and lived experiences of the communities in which they live.<sup>4</sup> Various research studies have found that younger people are more likely to identify as LGBTQ+.<sup>5</sup> According to data released by Gallup earlier this year, 7.2% of adults in the U.S. identify as LGBT, which Gallup reports is “double what it was when [it] first measured LGBT identification a decade ago.”<sup>6</sup> Per Gallup's data, adult members of Generation Z “are the most likely subgroup to identify as LGBT,” with 19.7% identifying as LGBT.<sup>7</sup> The Movement Advancement Project estimates that in the U.S. there are over 2.7 million LGBT adults aged 50

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<sup>4</sup> “LGBTQI+” has become increasingly used by our organizations, the federal government, and other stakeholders to be expressly inclusive of intersex and other sexual and gender diverse people like asexual and pansexual populations. However, data limitations like those we describe throughout these comments have often prevented intersex people, along with other LGBTQI+ subpopulations, from being consistently counted across various collections of data. We therefore will refer to “LGBTQI+” communities throughout the remainder of these comments, outside of where only particular subpopulations are being discussed by our referenced studies.

<sup>5</sup> See, e.g., SHOSHANA K. GOLDBERG ET AL., HUMAN RIGHTS CAMPAIGN & BOWLING GREEN STATE UNIV., EQUALITY ELECTORATE: THE PROJECTED GROWTH OF THE LGBTQ+ VOTING BLOC IN COMING YEARS (2022), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/LGBTQ-VEP-Oct-2022.pdf>. The Williams Institute has previously estimated that at least 2 million youth ages 13–17 identify as LGBT in the U.S., including approximately 300,000 youth who are transgender. JODY L. HERMAN ET AL., WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>; KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

<sup>6</sup> Jeffrey M. Jones, *U.S. LGBT Identification Steady at 7.2%*, GALLUP (Feb. 22, 2023), <https://news.gallup.com/poll/470708/lgbt-identification-steady.aspx>.

<sup>7</sup> *Id.*

and older.<sup>8</sup> The Williams Institute reports that 11.1% of LGBTQ adults (ages 18–60)—approximately 1.2 million people—identify as nonbinary, while 1.3 million adults identify as transgender.<sup>9</sup>

LGBTQ+ people are a demographically diverse population. Using Gallup Daily Tracking survey data from 2012–2017, the Williams Institute estimates that 58% of LGBT adults identify as female and that 42% identify among communities of color, including 1% of LGBT adults that identify as American Indian and Alaska Native.<sup>10</sup> The Williams Institute has also reported on evidence that individuals belonging to certain communities of color appear more likely than their White counterparts to identify as transgender.<sup>11</sup> And, data from the Behavioral Risk Factor Surveillance System indicate that LGBTQ+ adults, and transgender adults in particular, are significantly more likely than non-LGBTQ+ adults to self-report having at least one disability.<sup>12</sup>

Intersex people—those with innate variations in their physical sex characteristics—are estimated to make up as much as 1.7% of the global population.<sup>13</sup> Executive Order 14075, discussed further below, directs federal statistical agencies to “advance the responsible and effective collection and use of data on sexual orientation, gender identity, *and sex characteristics*.”<sup>14</sup> As explained below, intersex people and other sexual and gender minority populations are similarly underserved and share common challenges and experiences of social stigma, invisibility, and discrimination, that are rooted in restrictive norms and stereotypes regarding gender. While intersex populations are distinct, they intersect considerably with other LGBTQI+ subpopulations; for example, intersex people as a group have distinct experiences from transgender and nonbinary populations, but overall are more likely to be transgender or nonbinary than non-intersex people.

LGBTQI+ population estimates have taken years to develop due to data limitations, including those that have long excluded particular subpopulations from being counted. Because of its large sample size, inclusion of these measures on the ACS would be a watershed event in the decades-long effort to generate accurate, consistent, and representative data about diverse populations in communities across the country, including LGBTQI+ people. Enhancing ACS data collection on LGBTQI+ communities would produce more accurate population estimates and enable data disaggregation by race, ethnicity, disability, age, and other variables to help researchers and others better understand the experiences of those living at the intersection of multiple marginalized identities, such as LGBTQI+ people of color, LGBTQI+ people with disabilities, and LGBTQI+ aging adults.

### *Disparities and Discrimination Reported by LGBTQI+ People*

<sup>8</sup> MOVEMENT ADVANCEMENT PROJECT ET AL., *LGBT OLDER PEOPLE AND COVID 19* (2020), <https://www.lgbtmap.org/file/2020%20LGBTQ%20Older%20Adults%20COVID.pdf>

<sup>9</sup> BIANCA D.M. WILSON & ILAN H. MEYER ET AL., WILLIAMS INST., *NONBINARY LGBTQ ADULTS IN THE UNITED STATES 2* (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nonbinary-LGBTQ-Adults-Jun-2021.pdf>.

<sup>10</sup> *LGBT Demographic Data Interactive*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.

<sup>11</sup> HERMAN ET AL., *supra* note 5, at 6.

<sup>12</sup> Human Rights Campaign Found., *Understanding Disability in the LGBTQ+ Community*, HUMAN RIGHTS CAMPAIGN (Aug. 12, 2022), <https://www.hrc.org/resources/understanding-disabled-lgbtq-people>.

<sup>13</sup> Melanie Blackless et al., *How Sexually Dimorphic Are We? Review And Synthesis*, 12 AM. J. HUMAN BIOLOGY 151 (2000).

<sup>14</sup> Exec. Order 14075, *infra* note 35, at § 10(a) (emphasis added).

Researchers have been able to use existing data to provide valuable insights on disparities faced by LGBTQI+ people across the lifespan when compared to non-LGBTQI+ populations. For example, a longstanding body of research indicates that LGBTQ+ people are significantly more likely to be living in poverty than their straight and cisgender counterparts.<sup>15</sup> Studies have also long documented persistent negative health outcomes among LGBTQ+ populations, including disparities in both their physical and mental health.<sup>16</sup> A wealth of studies also highlight that LGBTQ+ people of color often fare worse than their White and non-LGBTQ+ counterparts on several aspects of their health and related measures of well-being.<sup>17</sup> Others similarly show that even among LGBTQ+ communities, the burden of observed disparities is not evenly distributed, with transgender people for example often reporting poorer health when compared to their cisgender counterparts<sup>18</sup> and even when compared to cisgender LGB people.<sup>19</sup> While large-scale survey research or other quantitative data collection on the experiences of intersex people in this country is not as developed as the existing research base on LGBTQ+ people, studies indicate that intersex people in the U.S. similarly report disparities and discrimination in areas such as health care, education, and employment.<sup>20</sup>

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<sup>15</sup> M. V. LEE BADGETT ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>; *see also* BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES (2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Poverty-COVID-Feb-2023.pdf> (using data from the Behavioral Risk Factor Surveillance System and the Bureau's Household Pulse Survey to analyze poverty rates during the early days of the COVID-19 pandemic); LAUREN J.A. BOUTON ET AL., WILLIAMS INST., LGBT ADULTS AGED 50 AND OLDER IN THE US DURING THE COVID-19 PANDEMIC (2023), <https://williamsinstitute.law.ucla.edu/publications/older-lgbt-adults-us/>

<sup>16</sup> *See, e.g.*, Kellan E. Baker, *Findings From the Behavioral Risk Factor Surveillance System on Health-Related Quality of Life Among US Transgender Adults, 2014-2017*, 179 JAMA INTERNAL MEDICINE 1141 (2019), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2730765>; Gilbert Gonzales & Carrie Henning-Smith, *Health Disparities by Sexual Orientation: Results and Implications from the Behavioral Risk Factor Surveillance System*, 42 J. COMMUNITY HEALTH 1163 (2017), <https://pubmed.ncbi.nlm.nih.gov/28466199/>.

<sup>17</sup> *See, e.g.*, LAUREN J.A. BOUTON ET AL., WILLIAMS INST., LGBT ADULTS AGED 50 AND OLDER IN THE US DURING THE COVID-19 PANDEMIC (2023), <https://williamsinstitute.law.ucla.edu/publications/older-lgbt-adults-us/>; BIANCA D.M. WILSON ET AL., WILLIAMS INST., RACIAL DIFFERENCES AMONG LGBT ADULTS IN THE U.S.: LGBT WELL-BEING AT THE INTERSECTION OF RACE (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Race-Comparison-Jan-2022.pdf>.

<sup>18</sup> *See, e.g.*, JODY L. HERMAN & KATHRYN K. O'NEILL, WILLIAMS INST., WELL-BEING AMONG TRANSGENDER PEOPLE DURING THE COVID-19 PANDEMIC (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pulse-Toplines-Nov-2022.pdf>.

<sup>19</sup> *See generally* ILAN H. MEYER ET AL., WILLIAMS INST., LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf>.

<sup>20</sup> *See, e.g.*, J. Wang et al., *Understanding the Relationship Between Experiences with Healthcare Discrimination and Emergency Healthcare Delay Among Intersex Adults*, 82 ANN. EMERG. MED. S47 (2023); Caroline Medina & Lindsay Mahowald, *Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022*, CTR. FOR AM. PROGRESS (Jan. 12, 2023), <https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/>; Amy Rosenwohl-Mack et al., *A National Study On The Physical And Mental Health Of Intersex Adults In The U.S.*, 15 PLoS ONE e0240088 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7546494/>; *see also* EUROPEAN UNION FUNDAMENTAL RIGHTS AGENCY, EU-LGBTI II: A LONG WAY TO GO FOR LGBTI EQUALITY (2020), <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>.

These and other observed negative outcomes among LGBTQI+ people have been linked to a number of factors, including exposure to minority stress due to disproportionate experiences with stigma and discrimination.<sup>21</sup> These experiences can begin early in life, with LGBTQ+ people often reporting experiences with rejection even by their own families that can lead them as youth to disproportionately experience homelessness.<sup>22</sup> LGBTQI+ people distinctly experience harassment and discrimination based on their SOGISC. These harmful experiences have been reported across a wide range of contexts, including in our nation's schools;<sup>23</sup> at their places of work;<sup>24</sup> when seeking housing including emergency shelter and services while unhoused;<sup>25</sup> within public accommodations;<sup>26</sup> and while seeking medical care<sup>27</sup> and long-term care.<sup>28</sup>

Unfortunately, such violence, harassment, and discrimination against LGBTQI+ people is on the rise. Recently, and for the first time in its nearly half-century history, the Human Rights Campaign declared a national state of emergency for LGBTQ+ people in the U.S., following an unprecedented spike in anti-LGBTQ+ legislative assaults, political extremism, and violent attacks nationwide.<sup>29</sup> Legislators in 2023 shattered previous records with over 550 anti-LGBTQ+ bills introduced—more than 80 of those becoming law—aiming to roll back safeguards against discrimination and harassment, enact bans on LGBTQI+ people's ability to access lifesaving medical care, and remove these communities and their stories from the public sphere.<sup>30</sup> The Federal Bureau of Investigation recently released its annual crime report for 2022, finding that anti-LGBTQ+ hate crimes increased sharply from the prior year—with a 13.8% increase in reports based on sexual orientation and a 32.9% jump in reported hate crimes based on gender identity.<sup>31</sup> LGBTQI+ people in the U.S. are currently living in fear and are facing an onslaught of

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<sup>21</sup> See NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *infra* note 53; see also Logan S. Casey et al., *Discrimination in the United States: Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Americans*, 54 HEALTH SERVS. RESEARCH 1454 (2019), <https://pubmed.ncbi.nlm.nih.gov/31659745/>.

<sup>22</sup> See, e.g., Sabra L. Katz-Wise et al., *Lesbian, Gay, Bisexual, and Transgender Youth Family Acceptance*, 63 Ped. Clin. N. Am. 1011 (2016), <http://dx.doi.org/10.1016/j.pcl.2016.07.005>.

<sup>23</sup> See, e.g., JOSEPH G. KOSCIW ET AL., GLESEN, THE 2021 NATIONAL SCHOOL CLIMATE SURVEY (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>; KATHRYN K. O'NEILL ET AL., WILLIAMS INST., EXPERIENCES OF LGBTQ PEOPLE IN FOUR-YEAR COLLEGES AND GRADUATE PROGRAMS (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-College-Grad-School-May-2022.pdf>.

<sup>24</sup> See, e.g., BRAD SEARS ET AL., WILLIAMS INST., LGBT PEOPLE'S EXPERIENCES OF WORKPLACE DISCRIMINATION AND HARASSMENT (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>.

<sup>25</sup> See, e.g., ADAM P. ROMERO ET AL., WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

<sup>26</sup> See, e.g., CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST., EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Public-Accomm-Discrimination-Feb-2016.pdf>.

<sup>27</sup> See, e.g., *You Don't Want Second Best* "Anti-LGBT Discrimination in US Health Care", HUMAN RIGHTS WATCH (July 23, 2018), <https://www.hrw.org/report/2018/07/23/you-dont-want-second-best/anti-lgbt-discrimination-us-health-care>.

<sup>28</sup> JUSTICE IN AGEING ET AL., LGBT OLDER ADULTS IN LONG-TERM CARE FACILITIES: STORIES FROM THE FIELD (UPDATED JUNE 2015), <https://www.justiceinaging.org/wp-content/uploads/2015/06/Stories-from-the-Field.pdf>

<sup>29</sup> HUMAN RIGHTS CAMPAIGN, LGBTQ+ AMERICANS UNDER ATTACK: A REPORT AND REFLECTION ON THE 2023 STATE LEGISLATIVE SESSION (2023), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Anti-LGBTQ-Legislation-Impact-Report.pdf>.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> FBI National Press Office, *FBI Releases 2022 Crime in the Nation Statistics*, FBI.GOV (Oct. 16, 2023), <https://www.fbi.gov/news/press-releases/fbi-releases-2022-crime-in-the-nation-statistics>.

efforts that will likely further entrench the violence and disparities they face compared to their non-LGBTQ+ counterparts.

## **II. Collecting SOGISC Data Through the ACS Would Support Federal Efforts to Enforce Civil Rights Laws**

Fully integrating SOGISC demographic data collection into the ACS will enable effective examination of the experiences of smaller, often underserved subpopulations—especially those living at the intersection of multiple marginalized identities like LGBTQI+ people of color and those impacted by recent federal and state law and policy changes like transgender and intersex people—in ways that other surveys already collecting such data simply cannot illuminate. This is because the ACS is unique in its reach and ability to combine data based on multiple demographic variables and multiple years to create large enough sample sizes for smaller populations.

Data collected through the ACS are needed by federal agencies to advance their efforts to identify and combat patterns and practices of discrimination against LGBTQI+ people. For example, the Department of Justice has expressed interest in and identified statutory and regulatory needs for SOGI content on the ACS. Specifically, doing so would allow the Department of Justice to better coordinate and enforce federal laws that cover anti-LGBTQI+ hate crimes and strengthen its ability to enforce civil rights laws, including those that protect LGBTQI+ people from discrimination.<sup>32</sup> Such acts are currently barred by various civil rights statutes that prohibit discrimination based on sex, but insufficient ACS data currently exist to support federal enforcement efforts targeting discrimination motivated by these bases. Utilizing ACS data to meaningfully enforce these laws is critical: a 2022 nationally representative survey by the Center for American Progress found that more than 1 in 3 LGBTQI+ adults reported facing some kind of discrimination in the year prior,<sup>33</sup> and recent analysis by the Human Rights Campaign finds that more than 1 in 5 of any type of reported hate crime is now motivated by anti-LGBTQI+ bias.<sup>34</sup>

In 2020, the U.S. Supreme Court held in *Bostock v. Clayton County* that the sex discrimination prohibition in Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits discrimination on the basis of sexual orientation and gender identity.<sup>35</sup> *Bostock* was decided using generally applicable principles of statutory interpretation—with the Court finding that Title VII’s bar on discrimination “because of . . . sex,” when interpreted “in accord with the ordinary public meaning of its terms at the time of its enactment[,]” encompasses sexual orientation and gender identity discrimination—that can be extended to other laws long read to be consistent with that

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<sup>32</sup> DOJ, Letter to Census Bureau Requesting SOGI Questions on the American Community Survey (Dec 9, 2022), <https://www.documentcloud.org/documents/23891611-dec-9-2022-letter-from-doj-to-census-bureau-requesting-sexual-orientation-and-gender-identity-questions-on-the-american-community-survey>.

<sup>33</sup> Medina & Mahowald, *supra* note 19.

<sup>34</sup> Delphine Luneau, *FBI’s Annual Crime Report — Amid State of Emergency, Anti-LGBTQ+ Hate Crimes Hit Staggering Record Highs*, HUMAN RIGHTS CAMPAIGN (Oct. 16, 2023), <https://www.hrc.org/press-releases/fbis-annual-crime-report-amid-state-of-emergency-anti-lgbtq-hate-crimes-hit-staggering-record-highs>.

<sup>35</sup> 140 S. Ct. 1731 (2020).

statute.<sup>36</sup> These include landmark civil rights laws like Title IX of the Education Amendments of 1972, Section 1557 of the Affordable Care Act, and the Fair Housing Act.<sup>37</sup>

Following *Bostock*, federal agencies have been subject to Executive Order 13988, which mandates the express inclusion of a bar on discrimination based on sexual orientation and gender identity within their regulations implementing statutes that are read consistent with Title VII.<sup>38</sup> Executive Order 14075 subsequently charged agencies with “delivering the full promise of equality for LGBTQI+ individuals, consistent with Executive Order 13988,” and directed particular agencies to “strengthen non-discrimination protections on the basis of sex, including sexual orientation, gender identity, and sex characteristics.”<sup>39</sup> Most recently, Executive Order 14091 recognized steps taken to date toward “prohibiting discrimination based on sexual orientation, gender identity, and sex characteristics across Federal programs,” and directed agencies to take further, comprehensive actions to advance civil rights, including for “LGBTQI+ persons.”<sup>40</sup> Federal courts have also since been interpreting civil rights statutes beyond Title VII in line with *Bostock* to prohibit discrimination on the basis of sexual orientation,<sup>41</sup> gender identity,<sup>42</sup> or sex characteristics.<sup>43</sup>

Many federal agencies have undertaken rulemaking pursuant to these executive orders and the reasoning in *Bostock*.<sup>44</sup> In addition to rulemaking regarding sexual orientation and gender identity, several agencies, including the Departments of Justice,<sup>45</sup> Education,<sup>46</sup> Health and Human

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<sup>36</sup> *See id.* at 1738.

<sup>37</sup> CHRISTINE J. BACK & JARED P. COLE, CONG. RES. SERV., POTENTIAL APPLICATION OF *BOSTOCK V. CLAYTON COUNTY* TO OTHER CIVIL RIGHTS STATUTES (2021), <https://crsreports.congress.gov/product/pdf/R/R46832>; CHRISTY MALLORY ET AL., WILLIAMS INST., LEGAL PROTECTIONS FOR LGBT PEOPLE AFTER *BOSTOCK V. CLAYTON COUNTY* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>

<sup>38</sup> Exec. Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7023 (Jan. 20, 2021).

<sup>39</sup> Exec. Order 14075, Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, 87 Fed. Reg. 37,189 (June 15, 2022).

<sup>40</sup> Exec. Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 88 Fed. Reg. 10,825 (Feb. 16, 2023).

<sup>41</sup> *See, e.g.*, *Grabowski v. Arizona Board of Regents*, No. 22-15714, 2023 WL 3961123 (9th Cir. June 13, 2023); *Walsh v. Friendship Village of South County*, No. 19-1395 (8th Cir. 2020).

<sup>42</sup> *See, e.g.*, *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), as amended (Aug. 28, 2020), cert. denied, 141 S. Ct. 2878 (2021).

<sup>43</sup> *See, e.g.*, *A.C. v. Metro. Sch. Dist. of Martinsville*, \_\_\_ F.4th \_\_\_, 2023 U.S. App. LEXIS 19785, \*21–22 (7th Cir. Aug. 1, 2023) (in dicta); *Grimm v. Gloucester County School Board*, 972 F.3d 586, 596, 615 (4th Cir. 2020) (in dicta); *Hughes v. Home Depot, Inc.*, 804 F.Supp.2d 223 (D.N.J. 2011); *Kastl v. Maricopa County Community College District*, No. 02–1531, 2004 WL 2008954 (D. Ariz. June 3, 2004), summ. judg. granted on other grounds, No. CV-02-1531-PHX-SRB (D. Ariz. Aug. 22, 2006). *See also Hecox v. Little*, 2023 U.S. App. LEXIS 21541 (9th Cir. Aug. 17, 2023) (recognizing that “sex,” whether or not defined only as “biological sex,” must include intersex variations); *Schroer v. Billington*, 424 F. Supp. 2d 203, 213 n.5 (D.D.C. 2006) (same).

<sup>44</sup> *See, e.g.*, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41,390 (July 12, 2022); Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47,824 (Aug. 4, 2022).

<sup>45</sup> DOJ Civil Rights Division, Interpretation of *Bostock v. Clayton County* regarding the nondiscrimination provisions of the Safe Streets Act, the Juvenile Justice and Delinquency Prevention Act, the Victims of Crime Act, and the Violence Against Women Act (Mar. 10, 2022), <https://www.justice.gov/crt/page/file/1481776/download>; *Title IX Legal Manual*, DOJ.GOV (Aug. 12, 2021), <https://www.justice.gov/crt/title-ix#Bostock>.

<sup>46</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390 (July 12, 2022) (to be codified at 34 C.F.R. § 106.10).

Services,<sup>47</sup> and the Consumer Financial Protection Bureau,<sup>48</sup> have also issued regulations or guidance recognizing that, under federal sex discrimination statutes, the reasoning of precedents such as *Bostock* “applies with equal force to discrimination against intersex people.”<sup>49</sup> Federal statutes likewise prohibit discrimination based on sex characteristics, including intersex traits.<sup>50</sup>

Together, these decisions, rules, and other pieces of guidance cover a broad range of contexts where discrimination impacting LGBTQI+ people can occur, which surveys like the ACS are particularly well equipped to generate information on and support successful enforcement against. Data play an important role in the government’s civil rights enforcement efforts, with the Federal Evidence Agenda on LGBTQI+ Equity—discussed further below—emphasizing that agencies would benefit from ensuring they have sufficient data on LGBTQI+ people in contexts in which they have a responsibility to implement or enforce civil rights protections.<sup>51</sup> We therefore believe that the Bureau’s proposal is necessary and would have practical utility, as it would support the eventual collection of information that could aid in the government’s legally mandated civil rights enforcement efforts.

### **III. Collecting SOGISC Data Through the ACS Would Support Federal Efforts to Advance Equity for LGBTQI+ People**

Improving the collection of SOGISC data through the ACS would also have practical utility by strengthening federal government efforts to advance equity for LGBTQI+ people. Although knowledge of the disparities that LGBTQI+ communities face has increased in recent years, significant gaps—driven by lack of reliable data—remain. Much of the existing evidence base relies on data gathered through community or non-Federal statistics or data collection. A dearth of consistent, large-scale SOGISC data collection by federal and state governments poses a barrier to obtaining adequate data about the diversity of LGBTQI+ experiences and to better comprehend and address disparities.<sup>52</sup> More reliable, quality data that allow for disaggregation by sexual orientation, gender identity, variations in sex characteristics, race, ethnicity, disability, age and other key demographic variables are needed to better understand the experiences of those living at the intersections of multiple marginalized identities.

In June 2022, President Biden issued Executive Order 14075, which requires the creation of an evidence agenda to coordinate a cross-government effort to promote and engage in inclusive and responsible data collection practices on SOGISC.<sup>53</sup> In January 2023, the Subcommittee on Sexual Orientation, Gender Identity, and Variations in Sex Characteristics—now part of the

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<sup>47</sup> Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 Fed. Reg. 56144, 56159, 56178 (Oct. 7, 2021), codified at 42 CFR § 59.5; Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47824 (Aug. 4, 2022) (to be codified at 45 C.F.R. §§ 92.8, 92.10, 92.101).

<sup>48</sup> Consumer Financial Protection Bureau, Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35150, 35166 (May 31, 2023) (“[The Equal Credit Opportunity Act] makes it unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis ... sex (including sexual orientation, gender identity, and sex characteristics).”).

<sup>49</sup> DOJ.GOV, *supra* note 43.

<sup>50</sup> *Id.*

<sup>51</sup> NAT’L SCIENCE & TECHNOLOGY COUNCIL, FEDERAL EVIDENCE AGENDA ON LGBTQI+ EQUITY 14 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>.

<sup>52</sup> *Id.* at 11.

<sup>53</sup> Exec. Order. 14075, *supra* note 37.

Subcommittee on Equitable Data of the National Science and Technology Council—published that Federal Evidence Agenda on LGBTQI+ Equity, which serves as a roadmap for federal agencies working to build evidence and leverage SOGISC data to advance equity for LGBTQI+ people.<sup>54</sup> As summarized in that agenda, the executive order “recognizes that in order to advance equity for LGBTQI+ people, the Federal Government must continue to gather the evidence needed to understand the LGBTQI+ community, the barriers they face, and the policy changes the Federal Government can make to enable their health and well-being.”<sup>55</sup>

As federal agencies continue their work to implement this executive order and make data-driven equity decisions, they will likely turn to the Bureau for information from its various collections, including the ACS. Discrimination takes many forms, and it can become insidiously commonplace and lead to devastating consequences for those holding multiple marginalized identities experiencing the combined brunt of homophobia, transphobia, racism, colorism, misogyny, ableism, and other forms of hate.<sup>56</sup> There is therefore significant value in the Bureau being able to disaggregate ACS data to draw insight on the experiences and needs of underserved communities through an intersectional lens, but it will be unable to do so in a manner that encompasses sexual orientation, gender identity, and variations in sex characteristics unless and until SOGISC measures are fully implemented.

#### **IV. The Proposed Test Includes Well-Researched Measures and Should Proceed**

The measures included by the Bureau in the Proposed Test reflect current best practices for asking questions about SOGI on surveys where they will be answered by both LGBTQI+ and non-LGBTQI+ people alike in order to produce high-quality, usable data. We strongly support this Proposed Test, which will yield rigorous qualitative and quantitative evidence about how SOGI measures will perform on the ACS, allowing the Bureau to evaluate whether and how these questions can be added to the ACS in the future.

*SOGI questions perform well on general population surveys, and people will answer them.*

Federal agencies have long been researching and collecting information on LGBTQI+ people through questions similar to the Bureau’s current proposal.<sup>57</sup> For decades, government and other researchers have studied SOGI and found that it is possible to measure these concepts well and obtain high-quality data; likewise, research shows that respondents largely do not find this information to be so sensitive that they would not provide it.<sup>58</sup> These efforts include work by the

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<sup>54</sup> NAT’L SCIENCE & TECHNOLOGY COUNCIL, *supra* note 49.

<sup>55</sup> *Id.* at 3.

<sup>56</sup> *Cf.* BIANCA D.M. WILSON ET AL., WILLIAMS INST., RACIAL DIFFERENCES AMONG LGBT ADULTS IN THE U.S.: LGBT WELL-BEING AT THE INTERSECTION OF RACE (2022) <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Race-Comparison-Jan-2022.pdf>.

<sup>57</sup> *See generally* NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., MEASURING SEX, GENDER IDENTITY, AND SEXUAL ORIENTATION (2022),

<https://nap.nationalacademies.org/catalog/26424/measuring-sex-gender-identity-and-sexualorientation>.

<sup>58</sup> *Id.* at 52–55, 67.

Bureau itself, which continues to collect information on respondents' SOGI through its Household Pulse Survey measuring the impact of the COVID-19 pandemic.<sup>59</sup>

*The Proposed Test relies on current best practices and includes several suggested improvements.*

In a recent report on the collection of SOGI information in the context of federally supported surveys, the Office of Management and Budget (OMB) highlighted guiding principles that have emerged out of these years of work to support the ongoing collection of SOGI information, including that collected data should have utility, be in support of an agency's mission, and be done with an emphasis on protecting respondents' confidentiality.<sup>60</sup> The federal government has long engaged in its own review of best practices, including through its Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys organized through the Federal Committee on Statistical Methodology.<sup>61</sup> The federal government has also supported external research on this topic, including by funding a Consensus Study Committee at the National Academies of Sciences, Engineering, and Medicine to develop recommendations for the measurement of sex, gender identity, and sexual orientation (the "NASEM Panel").<sup>62</sup>

In March 2022, the NASEM Panel released a consensus study report offering guidance and best practices for collecting data on SOGISC in population-based surveys, as well as in clinical and administrative settings.<sup>63</sup> The NASEM Panel's report also provides guiding principles for such data collection, specifically inclusiveness, precision, respecting autonomy, collecting only necessary data, and a dedication to confidentiality.<sup>64</sup> As noted by the Bureau, its proposed SOGI measures build on the recommendations issued by the NASEM Panel and OMB, which we believe correctly reflect the current state of research on this subject and should therefore lead to high-quality data on the feasibility of SOGI measures being added to the ACS. In particular, we strongly support the Bureau following the NASEM panel's recommendations by testing write-in options for both sexual orientation and gender identity measures. Adopting this approach will allow respondents to exercise autonomy in describing how they identify beyond the limited list of response options and allow researchers to monitor and analyze the use of terminology over time, providing valuable information to shape decision-making about adding new responses in the future.<sup>65</sup>

Notably, in circumstances where automated data collection is being used, the NASEM Panel recommends including Two-Spirit as a response option for respondents who identify as

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<sup>59</sup> Thom File & Jason-Harold Lee, *Phase 3.2 of Census Bureau Survey Questions Now Include SOGI, Child Tax Credit, COVID Vaccination of Children*, CENSUS.GOV (Aug. 05, 2021), <https://www.census.gov/library/stories/2021/08/household-pulse-survey-updates-sex-question-now-asks-sexual-orientation-and-gender-identity.html>.

<sup>60</sup> OMB, RECOMMENDATIONS ON THE BEST PRACTICES FOR THE COLLECTION OF SEXUAL ORIENTATION AND GENDER IDENTITY DATA ON FEDERAL STATISTICAL SURVEYS 3 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SOGI-Best-Practices.pdf>.

<sup>61</sup> See generally *Measuring Sexual Orientation and Gender Identity Research Group*, FED. COMM. STAT. METHODOLOGY (2018), <https://nces.ed.gov/FCSM/SOGI.asp>.

<sup>62</sup> NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 55.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at S-4.

<sup>65</sup> Medina & Mahowald, *supra* note 3.

American Indian or Alaska Native (AIAN). When interview-assisted or paper-and-pencil surveys are conducted, the Panel recommends tallying Two-Spirit responses through the write-in text option. While write-in options for the Bureau's proposed SOGI measures provide an opportunity for respondents to indicate a Two-Spirit identity or other tribal-specific term, we support the Bureau ensuring accurate, inclusive data collection on Two-Spirit populations by adopting the NASEM Panel's recommendations for automated collections and partnering with Indigenous communities to invest in additional research and testing to improve collection of these data on general population surveys.

Generally, and consistent with the NASEM Panel's recommendations, we recommend that collections of data allow respondents to indicate a response of "I don't know" to questions measuring their SOGISC. However, we recognize that the ACS does not allow that method of response for any other question, and we therefore support the Bureau's proposal to not provide such a response option on the Proposed Test. We believe that individual respondents should always be empowered to choose not to provide SOGISC information, or to provide it in a way that minimizes their concerns about privacy and safety. We commend the Bureau for proposing to test measures and means of administration that allow individual respondents to skip these questions—just as they are permitted to skip any other question on the ACS. We likewise appreciate that the Proposed Test relies on methodology that has been utilized in other surveys, including having response cards for in-person interviews to help ensure the safety of respondents in light of the perceived more sensitive nature of these questions. People participating in the Proposed Test, and in the ACS in the future, should be informed of the value the Bureau places on self-identification and of their right to decline to answer individual questions on the ACS, considering the potential for confusion given the mandatory nature of the ACS itself.

We commend the Bureau for issuing a proposal that not only draws on existing research on SOGI measurement, such as the NASEM Panel's report, but also builds on that knowledge base. Specifically, we strongly support the Bureau incorporating research priorities suggested by the NASEM Panel by including a "nonbinary" option and a "mark all that apply" option for the current gender question in addition to the male, female, and transgender response options. As the Bureau notes, more than one million people identify as nonbinary—which is an increasingly common term. Additionally, we note that a nonbinary response option would empower individuals who are legally recognized as being neither male nor female to answer the gender question accurately,<sup>66</sup> which would likely assuage concerns by nonbinary respondents who might otherwise feel like they are being forced to willfully provide false information in violation of the law<sup>67</sup> because of the options provided. The "mark all that apply" option would remove a forced choice between respondents selecting a binary gender identity and a transgender identity, which may improve the validity of the measure for transgender respondents. Based on its review of the current evidence base, the NASEM Panel recommended testing both of these options as priority

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<sup>66</sup> See, e.g., JODY L. HERMAN & KATHRYN K. O'NEILL, WILLIAMS INST., DEMAND FOR X GENDER MARKER ON PASSPORTS AMONG NONBINARY LGBTQ ADULTS (2022), <https://williamsinstitute.law.ucla.edu/publications/x-gender-markers-passports> (analysis by the Williams Institute estimating that 1.4% of the nonbinary LGBTQ population in the U.S., or 16,700 people, may request passports with an X gender marker each year, and noting that at the time of the study, twenty-one states and the District of Columbia allowed X gender markers on driver's licenses).

<sup>67</sup> See 13 U.S.C. § 221.

areas of research in order to potentially improve the collection of gender identity data. We strongly support the Bureau proceeding with this research as part of the Proposed Test.

While we recognize that, in practice, many respondents on large population surveys may not clearly differentiate between the concepts of sex and gender, we support the Bureau engaging in research that examines the impact of shifting from sex-specific terminology (e.g., “male” and “female”) to gender-specific terminology (e.g., “woman,” “man,” “girl,” and “boy”) to avoid conflating these concepts. Additionally, we support the Bureau testing the inclusion of a verification question to affirm both congruence and incongruence of respondents’ sex and current gender in order to reduce measurement error and ensure accurate reporting for all respondents.

Because there are both English and Spanish language versions of the ACS questionnaire, we also urge the Bureau to engage in language expert review of draft translations and cognitive testing to ensure translations of these new measures are well understood and will produce accurate, high-quality data. Overall, the Proposed Test must be robust enough to accurately capture ethnic, racial, and geographic diversity of LGBTQI+ communities, especially among historically undercounted and underrepresented racial and ethnic groups. We urge the Bureau to design its qualitative and quantitative research to ensure that it captures this diversity.

We are eager to see the results of the Proposed Test, as these improvements speak to an effort to be more inclusive and to obtain more accurate data about gender minorities. Importantly, the NASEM Panel endorsed research on,<sup>68</sup> and LGBTQI+ stakeholders have long been advocating for, these additional options proposed by the Bureau. Testing of both well-established measures and emerging options through the ACS is important, with the NASEM Panel previously noting that the absence of SOGISC measures on the decennial census and ACS means that “there is no ‘gold standard’” against which data collections can apply weighting adjustments or assess data quality and nonresponse bias for LGBTQI+ populations.<sup>69</sup>

#### *Importance of proposed research into “proxy reporting” of SOGI.*

Notably, the Federal Evidence Agenda on LGBTQI+ Equity identified proxy reporting as an area of consideration for agencies implementing SOGISC data collection—<sup>70</sup> which we note the Bureau also signaled is an area of “specific interest” for the Proposed Test.<sup>71</sup> Proxy reporting, which refers to an individual answering questions for others in their household (or even for neighbors or tenants in the case of the decennial census) can be of particular interest for LGBTQI+ community members.<sup>72</sup> For many LGBTQI+ people, who may not be open about their

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<sup>68</sup> See, e.g., NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 55, at 132–33 (recommending assessment of nonbinary response options and other possible improvements to gender identity measures).

<sup>69</sup> *Id.* at 47.

<sup>70</sup> NAT’L SCIENCE & TECHNOLOGY COUNCIL, *supra* note 49, at 41.

<sup>71</sup> 88 Fed. Reg. at 64,405.

<sup>72</sup> See, e.g., Jeffrey C. Moore, *Miscellanea, Self/Proxy Response Status and Survey Response Quality, A Review of the Literature*, 4 J. OFF. STAT. 155 (1988), <https://www.proquest.com/openview/56475ded203ec1bff30c3277bbb70757/1?pq-origsite=gscholar&cbl=105444>.

SOGI even to people close to them, or fully accepted by members of their household,<sup>73</sup> proxy reporting may potentially lead to inaccuracies or under-reporting. Several studies have already considered this very issue. For example, researchers exploring proxy reporting for the Current Population Survey found that SOGI questions were understood by proxy reporters; most did not find them difficult to complete; and inaccuracy of responses was low.<sup>74</sup> We are heartened to see the Bureau's commitment to and strong emphasis on proxy testing within the Proposed Test, and we look forward to review of these results. We encourage the Bureau to evaluate potential differences between proxy reporting of sexual orientation and proxy reporting of gender identity, including whether subpopulations like bisexual and transgender people have divergent experiences with proxy reporting, as well as the performance of proxy reporting for different groups of people including children ages 15 and older as compared to adults.

*The privacy and confidentiality provisions for the ACS are robust.*

We are keenly aware of the current political and legal environment in which LGBTQI+ people in the U.S. are living. We do not believe, however, that these challenges should stand in the way of the Proposed Test, the larger deliberative, evidence-based process, or the eventual addition of SOGISC measures to the ACS to meet the statutory needs articulated by the DOJ and other federal agencies. We appreciate that the Bureau already collects voluntary, statistical data on other demographic groups experiencing well-documented discrimination and disparities through the ACS. Fortunately, the unique statutory confidentiality protections for personal data the Bureau collects represent the strongest safeguards in federal law and provide robust protection against the types of potential misuse of data described by OMB and the NASEM Panel.<sup>75</sup> Federal law since 1954 has prohibited the Bureau from using data it collects for any reason other than for statistical purposes, or from sharing an individual's responses with other federal, state, or local agencies, private companies, or any other entity—for any reason. We recommend that the Bureau continue providing information on these important protections to all ACS respondents in an accessible manner, and that individuals participating in the Proposed Test receive information like what ACS respondents would receive to allow for assessment of that information's impact on their responses. As the Bureau proceeds with the Proposed Test and moves forward with subsequent research, we urge the Bureau to reach out to, meaningfully engage with, and communicate with LGBTQI+ community stakeholders to solicit feedback, raise awareness, and share information about its process to improve data collection on LGBTQI+ populations through the ACS.

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<sup>73</sup> See, e.g., Patti Neighmond, *Home But Not Safe: Some LGBTQ Young People Face Rejection From Families in Lockdown*, NPR (May 17, 2020), <https://www.npr.org/sections/health-shots/2020/05/17/856090474/home-but-not-safe-some-lgbtq-young-people-face-rejection-from-families-in-lockdo>; see also Sabra L. Katz-Wise et al., *Lesbian, Gay, Bisexual, and Transgender Youth Family Acceptance*, 63 *PED. CLIN. N. AM.* 1011 (2016), <http://dx.doi.org/10.1016/j.pcl.2016.07.005>.

<sup>74</sup> Jessica Holzberg et al., *Can They and Will They? Exploring Proxy Response of Sexual Orientation and Gender Identity in the Current Population Survey*, 35 *J. OFF. STAT.* 885 (2019), <https://doi.org/10.2478/jos-2019-0037>.

<sup>75</sup> More specifically, it prohibits any Bureau employee—even after they cease their employment with the Bureau—from using the information collected for any purpose other than producing statistical datasets, with violations carrying up to five years of prison time, \$250,000 in fines, or both.

## V. Support for Additional Research Similar to the Proposed Test

The Proposed Test will yield valuable insights, evidence, and learnings about how SOGI measures could perform on the ACS. The outcomes of the Proposed Test should guide how the Bureau proceeds—and we are hopeful that this effort will result in the inclusion of SOGI measures on the ACS in the near future.

That said, there are several areas for future research that we urge the Bureau to continue exploring as part of its broader research agenda, in settings beyond the Proposed Test. While the current Proposed Test will not test measures to identify intersex people, we encourage the Bureau to continue working with federal agencies to articulate the need for ACS estimates on people with intersex traits. Given the statutory requirements for data articulated by the U.S. Department of Justice and other federal agencies related to discrimination based on sex that includes discrimination against intersex people and those with variations in sex characteristics, we ask the Bureau to continue its preliminary research on the measurement of variations in sex characteristics, with the goal of preparing for a subsequent field test. Notably, the NASEM Panel, the LGBTQI+ Evidence Agenda, and OMB report all urge the importance of advancing research and data collection on variations in sex characteristics.<sup>76</sup>

Likewise, as part of its broader research agenda in non-survey settings, the Bureau should consider testing a separate measure on transgender status, as the NASEM Panel similarly recommends future investment in testing “[a]lternative two-step gender measures that offer an inclusive count of both cisgender and transgender people for use in contexts . . . where specific information on sex assigned at birth is unnecessary but identifying transgender people for the purposes of service delivery or monitoring disparities is still desirable.”<sup>77</sup>

## VI. Conclusion

In order for the federal government to effectively enforce civil rights protections, including those protecting LGBTQI+ people from discrimination and ensuring equal access, federal surveys such as the ACS must include SOGISC measures. Further, the inclusion of SOGISC measures on the ACS is critical to understanding disparities, developing evidence-based policies, and advancing equity. Our organizations are dedicated to supporting this work. We fully support the Proposed Test and the benefits of the proposed data collection, both to test the proposed measures and provide a foundation for future implementation. The value of the new data would outweigh any potential increased burden on ACS respondents and other relevant entities, given our knowledge of LGBTQI+ people and their experiences with discrimination, violence, and exclusion. The research base makes clear that collecting SOGI data through the ACS is necessary for the proper performance of the functions of this collection and will have practical utility in providing insight on LGBTQI+ populations’ experiences relevant to the civil rights enforcement and equity advancement efforts of multiple federal agencies.

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<sup>76</sup> See *id.* at 145.

<sup>77</sup> *Id.* at 132–33. *Id.* at 132–33 where the NASEM Panel recommends research to test an alternative two-step measure in these settings, which could include, for example, a question that asks about current gender in addition to a question that asks about gender modality (e.g., are you transgender?).

Thank you for your consideration of these recommendations. Please do not hesitate to contact Luis A. Vasquez, [luis.vasquez@hrc.org](mailto:luis.vasquez@hrc.org), or Caroline Medina, [cmedina@whitman-walker.org](mailto:cmedina@whitman-walker.org), if you need any additional information.

Sincerely,

*National Organizations*

A Better Balance  
Advocates for Youth  
American Atheists  
American Educational Research Association  
American Psychological Association  
Arab American Institute  
Bayard Rustin Center for Social Justice  
BiNet USA  
Center for American Progress  
Center for Black Equity  
Center for Law and Social Policy (CLASP)  
CenterLink: The Community of LGBTQ Centers  
Coalition on Human Needs  
Council of Professional Associations on Federal Statistics\*  
DBGM, Inc.  
Doctors For America  
Dolan Research International, LLC  
Evaluation, Data Integration, and Technical Assistance (EDIT) Program, Institute for Sexual and Gender Minority Health and Wellbeing, Northwestern University  
Equality Federation  
Family Equality  
Family Values @ Work  
The Fenway Institute  
Food Research & Action Center (FRAC)  
Garden of Peace, Inc.  
Georgetown Center on Poverty and Inequality  
Girls Inc.  
GLAAD  
GLMA: Health Professionals Advancing LGBTQ+ Equality  
GLSEN  
Human Rights Campaign  
Hunger Free America

\*Representing 15 member organizations: Agricultural & Applied Economics Association, American Association for Public Opinion Research, American Association of University Professors, American Economic Association, American Educational Research Association, American Psychological Association, Association of Public Data Users, Association for Public Policy Analysis and Management, American Sociological Association, American Statistical Association, International Association for Social Science Information Services and Technology, Justice Research and Statistics Association (JRSA), National Association for Business Economics, Population Association of America, and Rural Sociological Society.

ICPSR, The Data Consortium  
interACT: Advocates for Intersex Youth  
Japanese American Citizens League (JACL)  
Just Detention International  
Justice in Aging  
Lambda Legal  
LGBTQ+ Victory Fund  
Lifestance  
MAZON: A Jewish Response to Hunger  
Movement Advancement Project  
Minority Veterans of America  
MomsRising  
National Black Justice Coalition  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Community Action Partnership  
National Council of Asian Pacific Americans (NCAPA)  
National Council of Jewish Women  
National Employment Law Project  
National Health Care for the Homeless Council  
National Health Law Program  
National Immigration Law Center  
National LGBT Cancer Network  
National LGBTQ Task Force Action Fund  
National Partnership for Women and Families  
National Organization for Women  
National Women's Law Center  
National Working Positive Coalition  
NASTAD  
Oasis Legal Services  
Pride at Work  
Prison Policy Initiative  
Queer Family Planning Project  
Qweerty Gamers  
SAGE (Advocacy and Services for LGBTQ+ Elders)  
Sam & Devorah Foundation for Trans Youth  
Stand with Trans  
State Innovation Exchange (SIX)  
Stop AAPI Hate  
Strategies for High Impact  
Southeast Asia Resource Action Center (SEARAC)  
Transgender Law Center  
The Trevor Project  
Union for Reform Judaism  
Whitman-Walker Institute  
Woodhull Freedom Foundation

*State Organizations*

AIDS Alabama  
AR Health  
Arizona Trans Youth and Parent Organization  
Aunt Rita's Foundation  
Bradbury Sullivan LGBT Center  
CA LGBTQ Health and Human Services Network  
California Pan-Ethnic Health Network  
Coalition for Social Justice Education Fund  
Colors+  
Common Good Iowa  
Economic Opportunity Institute  
Equality California  
Equality Illinois  
Equality NC  
Equitas Health  
Fair Wisconsin  
Gender Equality New York, Inc.  
Gender Justice  
GenderNexus  
Georgia Budget and Policy Institute  
Indiana Youth Group (IYG)  
Keystone Research Center  
Lancaster LGBTQ+ Coalition  
Maryland Center on Economic Policy  
Massachusetts Transgender Political Coalition  
MassEquality  
Michigan League for Public Policy  
N.Y. Census & Redistricting Institute at New York Law School  
National Organization for Women, Missouri Chapter  
NC Counts Coalition  
New Mexico Voices for Children  
New York Transgender Advocacy Group  
North Carolina Justice Center  
Oklahomans for Equality (OkEq)  
One Colorado  
Our Spot Kc  
OutFront Minnesota  
Pennsylvania Equality Project Inc  
Rhode Island Public Health Institute  
Santa Fe Chapter of the National Organization for Women  
Pride Action Tank  
Silver State Equality-Nevada  
Southern Arizona AIDS Foundation  
Transgender Michigan

Transhealth  
Triangle Community Center  
Us Giving Richmond Connections  
Utahns Against Hunger  
Waves Ahead Corp  
We Are Family

*Local Organizations*

AIDS Foundation Chicago  
AIDS Resource Alliance, Inc.  
AltaMedHealth Services  
Atlanta Pride Committee  
Bellingham Queer Collective  
Charlotte Trans Health  
DC Fiscal Policy Institute  
Dream Again Therapy, LLC  
Economic Roundtable  
Equality Community Center  
Erie Gay News  
Four Corners Rainbow Youth Center  
The Frederick Center  
Grand Rapids Pride Center  
GRIOT Circle  
Hudson Pride Center  
Inside Out Youth Services  
Legacy Community Health  
LGBT Center of Raleigh  
LGBT Community Center of Greater Cleveland  
LGBT Community Center of Long Island  
The LGBTQ Community Center of the Desert  
The LOFT LGBTQ+ Community Center  
Long Island Gay and Lesbian Youth (LIGALY)  
Los Angeles LGBT Center  
Mazzoni Center  
Montco PA NOW  
Muncie OUTreach LGBTQ+ Center  
National Organization for Women, Columbia Area Chapter  
North County LGBTQ Resource Center  
NY LGBT Network  
Omaha ForUs LGBTQ+ Center  
Oregon Center for Public Policy  
OutCenter Southwest Michigan  
Pacific Pride Foundation  
Pride Center of Staten Island  
Pride Center of Terre Haute Inc.  
Pride Center San Antonio

Pride Community Center, Brazos Valley Texas  
PRISM FL, Inc  
Rainbow Connections ATX, a program of Family Eldercare  
RaInbow Pride Youth Alliance  
Rainbow Rose Center  
Resource Center  
The San Diego LGBT Community Center  
San Diego Pride  
Services and Advocacy for GLBT Elders - Long Island  
Shoals Diversity Center  
Spencer Pride  
SQSH (St. Louis Queer+ Support Helpline)  
Storied Analytics, LLC  
The LGBTQ Center (South Bend, IN)  
The LIAM Foundation  
The Pride Center at Equality Park  
Transinclusive Group  
Uptown Gay and Lesbian Alliance (UGLA)  
Wanda Alston Foundation  
Wellness Services, Inc.  
William Way LGBTQ Community Center

*Cities*

Mayor Catherine S. Read, City of Fairfax, Virginia