



May 5, 2025

Sent via Email & Registered Mail

National Guard Bureau
c/o Illinois National Guard EO & EEO Office
State Equal Employment Manager, David M. Malenfant
1301 N. MacArthur Blvd.
Springfield, IL 62702
Email: david.m.malenfant.civ@army.mil

Office of the Secretary of Defense
c/o WHS, Office of Equal Employment Opportunity Programs
Director, Equal Employment Opportunity Programs
4800 Mark Center Drive, Suite 03G19
Alexandria, VA 22350-3400
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U.S. Office of Personnel Management
Equal Employment Opportunity Office
1900 E Street, NW - Room 6452
Washington, DC 20415
Email: EEO@opm.gov

Re: LeAnne Withrow, Class Complaint of Discrimination

To Whom It May Concern:

Enclosed please find the following documents submitted on behalf of my client, LeAnne Withrow:

- (1) NGB-713 Form;
- (2) EEO Class Complaint of Discrimination;
- (3) EEO Counselors Report (dated April 11, 2025);
- (4) Notice of Right to File a Discrimination Complaint (dated April 21, 2025).

This complaint alleges that Ms. Withrow, a transgender woman who has served since August 2016 as a civilian federal government employee in the Illinois National Guard, part of the National Guard Bureau of the DOD, has experienced unlawful discrimination based on the policy ordered by President Donald Trump and implemented by Respondents the National Guard Bureau, Office of the Secretary of Defense, and the U.S. Office of Personnel Management, excluding her from using women's bathroom and exercise facilities that align with her gender. The complaint alleges that this policy violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*



("Title VII"), the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. §§ 500 *et seq.* (the "APA"). In filing this class complaint, Ms. Withrow seeks to serve as the agent of a class of all transgender and/or intersex employees of the federal government, including but not limited to civilian employees of the National Guard Bureau, the U.S. Army, and the Department of Defense, pursuant to 29 C.F.R. § 1614.204(a)(3).

Ms. Withrow has retained counsel, with the law firm of Arnold & Porter Kaye Scholer LLP, the American Civil Liberties Union Foundation, the Roger Baldwin Foundation of ACLU, Inc., the attorneys of the American Civil Liberties Union Foundation of the District of Columbia, and Democracy Forward Foundation as her representatives.

If you require further information, please feel free to contact me or any of the representatives listed in the complaint. Ms. Withrow may not be contacted without first obtaining the consent of counsel.

Sincerely,

/s/ Shana Knizhnik

Shana Knizhnik
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
917-716-0609
sknizhnik@aclu.org

6. LOCATION OF POSITION: <i>(If different from 4)</i>	
7. CHECK BELOW THE BASES <i>(Reasons)</i> FOR ALLEGED DISCRIMINATION:	
<input type="checkbox"/>	R RACE <i>(Check Your Race)</i> <input type="checkbox"/> African American <input type="checkbox"/> Caucasian <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian Pacific Islander <input type="checkbox"/> Hispanic Latino
<input type="checkbox"/>	A AGE <i>(State Your Age)</i> _____ DOB _____
<input checked="" type="checkbox"/>	S SEX <i>(Check Your Sex)</i> <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
<input type="checkbox"/>	H HARASSMENT <i>(Check Your Appropriate Basis)</i> <input type="checkbox"/> Sexual <input type="checkbox"/> Non- Sexual
<input type="checkbox"/>	N NATIONAL ORIGIN <i>(State Your National Origin)</i> <input type="checkbox"/> Hispanic <input type="checkbox"/> Other <i>(Specify)</i> _____
<input type="checkbox"/>	C COLOR <i>(State Your Color)</i> _____
<input type="checkbox"/>	H HANDICAP <i>(State Your Handicap)</i> <input type="checkbox"/> Mental <input type="checkbox"/> Physical
<input type="checkbox"/>	L RELIGION <i>(State Your Religion)</i> _____
<input type="checkbox"/>	O RETALIATION <i>(Based Upon EO/EEO Activity)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No
8. ARE YOU BEING REPRESENTED:	
<input checked="" type="checkbox"/> Yes <i>(Complete 9)</i> <input type="checkbox"/> No	
9. IF YES, NAME OF REPRESENTATIVE:	
ACLU, ACLU-DC, ACLU of Illinois, Democracy Forward, Arnold & Porter Attorney at Law <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
10. I <input type="checkbox"/> have <input checked="" type="checkbox"/> have not filed a grievance on this matter.	
11. I <input type="checkbox"/> have <input checked="" type="checkbox"/> have not appealed a grievance on this matter.	
12. WHAT CORRECTIVE ACTION DO YOU WANT TAKEN TO RESOLVE YOUR COMPLAINT?	
<p>Rescission of Executive Order 14168, "Defending Women from Gender Ideology, Extremism, and Restoring Biological Truth to the Federal Government," and subordinate entity policies that discriminate against transgender employees.</p> <p>Re-establishing my ability to utilize gendered facilities based on my gender identity.</p> <p>Remain with identification as female data systems and prohibit the administrative change to "male" outlined in EO and subordinate policies.</p> <p>(Please see attached complaint for more information.)</p>	
13. SPECIFIC ALLEGATION AND ISSUES: <i>(Explain how you believe you were discriminated against)</i>	
<p>Issues A. Number each issue. B. List briefly the alleged act of discrimination, the basis, and the date(s) it took place. C. Optional: You may indicate the name of the individual you believe discriminated against you.</p> <p>SAMPLE: 1. I was discriminated against on (date) on the basis of (Race, Religion, or other Basis) when (briefly list the discrimination event(s) or personnel action).</p>	

13. SPECIFIC ALLEGATION AND ISSUES: (Continued)

I was discriminated against on 20 January 2025 on the basis of sex/gender when President Donald Trump published Executive Order 14168 "Defending Women from Gender Ideology, Extremism, and Restoring Biological Truth to the Federal Government."

I was discriminated on 29 January 2025 on the basis of sex/gender when the Office of Personnel Management published "Initial Guidance regarding President Trump's Executive Order 14168" by Mr. Charles Ezell.

I was discriminated on 31 January 2025 on the basis of sex/gender when the Department of Defense Implemented Executive Order 14168 "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" published by Mr. Pete Hegseth, Secretary of Defense.

I was discriminated against on 28 February 2025 on the basis of sex/gender when General Steven S. Nordhaus, Chief of National Guard Bureau, published CNGB Memo "Actions on Defending Women Executive Order" was released.

(Please see attached complaint for more information on all claims regarding this discrimination.)

<div>WITHROW.LEANNE.KEELY ERIN.1393681604</div> <div>Digitally signed by WITHROW.LEANNE.KEELY ERIN.1393681604 Date: 2025.05.05 09:50:22 -05'00'</div>	<div>05/05/2025</div>
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**CLASS COMPLAINT OF DISCRIMINATION IN
VIOLATION OF TITLE VII AND THE FIFTH AMENDMENT
AND FOR VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

Charging Party: LeAnne Keely Erin Withrow
320 S. Main Street
Niantic, IL 62551

Responding Parties: National Guard Bureau
c/o Illinois National Guard EO & EEO Office
1301 N. MacArthur Blvd.
Springfield, IL 62702

Office of the Secretary of Defense
c/o WHS, Office of Equal Employment Opportunity
Programs
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4800 Mark Center Drive
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U.S. Office of Personnel Management
Equal Employment Opportunity Office
1900 E Street, NW - Room 6452
Washington, DC 20415

Introduction

1. This class action sex discrimination complaint is brought by LeAnne Withrow (“Complainant”) on behalf of herself and all other transgender and/or intersex employees of the United States government (including but not limited to employees of the National Guard Bureau, the United States Army, and the Department of Defense (“DOD”)) who have been prohibited from utilizing facilities including bathrooms and exercise facilities consistent with their gender. The disparate treatment of transgender and intersex employees constitutes discrimination in terms and conditions of employment on the basis of sex (gender identity) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (Title VII). The same conduct also violates the guarantee of equal protection under the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act.

Background on the Complainant

2. Gender identity is a person’s fundamental, internal sense of themselves as male, female, a blend of both, or neither. There is a medical consensus that gender identity is innate and that efforts to change a person’s gender identity are unethical and harmful to a person’s health and well-being.

3. The gender marker on a birth certificate is designated at the time of birth usually based upon the appearance of an infant's external genitalia. However, a person's sex has many components, such as chromosomes, hormone levels, internal and external reproductive organs, and gender identity.
4. Transgender people have a gender identity that differs from their sex assigned at birth (an assignment typically based upon external genital anatomy).
5. A transgender woman is a person who was designated as male sex at birth but has a female gender identity. A transgender woman cannot simply turn off her gender identity, just as a non-transgender woman (also known as "cisgender" woman) cannot turn off her gender identity.
6. Intersex people, or people with "differences of sexual development," are born with a combination of sex characteristics, including chromosome patterns, hormone production or response, internal reproductive organs, or external genitalia, that do not fit typical binary notions of male or female bodies. Intersex variations differ; some intersex traits may be discovered at birth, some may not be discovered until puberty, and some may never be discovered. Some intersex variations cause intersex people to produce neither sperm nor ova, or produce one or the other, but have external genitalia typically associated with the "opposite" sex. Most intersex people are assigned a binary sex designation at birth based on external genitalia. Some intersex people have a gender identity that matches their sex assigned at birth, while others do not (and may identify as transgender in addition to being intersex).
7. Complainant is a transgender woman who has served since August 2016 as a civilian federal government employee in the Illinois National Guard, part of the National Guard Bureau of the DOD. She has served since September 2021 as the Title 5 Lead Military and Family Readiness Specialist, after previously serving as an EEO Specialist and as a Family Programs Specialist. Complainant has been recognized for her outstanding performance in these roles, receiving a Sustained Superior Performance commendation from the Adjutant General of the Illinois National Guard in 2019 and another Superior Performance commendation from the Adjutant General in 2022. She is stationed at Camp Lincoln, Springfield, Illinois.
8. Until 2023, Complainant served her country as a staff sergeant in the Illinois Army National Guard, where she served as a Chief Public Affairs Noncommissioned Officer. Throughout her military career, Complainant participated in many major exercises and notable events around the globe including the 2012 NATO Conference, Operation Ulchi Freedom Guardian 13, Operation Ready Response, Exercises Eager Lion 19, Arctic Eagle 20, and Arctic Eagle-Patriot 22, as well as deploying to Guantanamo Bay, Cuba, in support of Operation Enduring Freedom and Joint Task Force Honor 2015-2016. Her military decorations include the Meritorious Service Medal, Army Commendation Medal, Joint Meritorious Unit Award, Army Achievement Medal with two Oak Leaf Clusters, Army Reserve Component Achievement Medal with three Oak Leaf Clusters, National Defense Service Medal, Global War On Terrorism Expeditionary Medal, Global

War on Terrorism Service Medal, Armed Forces Reserve Medal with Bronze Hourglass and M Device, and Illinois National Guard Abraham Lincoln Medal Of Freedom.

9. Complainant came out as transgender in 2016, shortly after the first ban on transgender military service members was lifted. Complainant became the first openly transgender Illinois National Guard Soldier, and in November 2019, she became the first to serve in her corrected gender and be recognized in the Defense Enrollment Eligibility Reporting System (DEERS).

President Trump's Executive Order, OPM Guidance, and DOD Implementation

10. On January 20, 2025, President Donald Trump issued Executive Order 14168 (the "Executive Order") titled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government." *See* <https://www.federalregister.gov/documents/2025/01/30/2025-02090/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal>.
11. The Executive Order rejects the possibility that someone's gender identity can differ from their sex, which the Executive Order defines as an individual's cell structure at conception. § 2(c), (d), (f). The Executive Order refers to such incongruences as a "false" "inchoate social concept" that it terms "gender ideology" and bans the United States from funding or even using language that "inculcates gender ideology." *Id.* §§ 2(f), 3(e). The Executive Order does not contemplate that sex consists of multiple factors or that individuals may be born with variations in natural sex characteristics. In response to the Executive Order, agencies purged their websites of thousands of documents that used the term transgender or contained neutral research on issues related to the experiences of transgender and intersex people. *See Drs. for Am. v. Off. of Pers. Mgmt.*, No. CV 25-322 (JDB), 2025 WL 452707, at *5 (D.D.C. Feb. 11, 2025).
12. Federal courts have declared portions of the Order unconstitutional, *PFLAG, Inc. v. Trump*, No. CV 25-337-BAH, 2025 WL 685124, at *27 (D. Md. Mar. 4, 2025), and have found that the Executive Order is based on animus against transgender people. *Talbott v. United States*, No. 25-CV-00240 (ACR), 2025 WL 842332, at *36 (D.D.C. Mar. 18, 2025); *Washington v. Trump*, No. 2:25-CV-00244-LK, 2025 WL 659057, at *24 (W.D. Wash. Feb. 28, 2025) (concluding that the "Executive Order . . . reflects a bare desire to harm a politically unpopular group, as its underlying actual purpose. Its language, which declares that it is 'false' that 'males can identify as ... women and vice versa' and that the only identity that is 'true' in 'reality' is one's biological sex, denies and denigrates the very existence of transgender people—despite the evidence that they do exist and have as long as human history has been recorded.") (cleaned up).
13. Section 4(d) of the Executive Order provides that agencies of the federal government must "tak[e] appropriate action to ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity."
14. On January 29, 2025, Charle Ezell, Acting Director of Responding Party U.S. Office of Personnel Management, issued a memorandum (the "Ezell Memorandum") providing

- guidance regarding the Executive Order. The Ezell Memorandum directed each of the heads and acting heads of departments and agencies of the federal government, including the DOD, to – no later than 5:00 p.m. EST on January 31, 2025 – “[e]nsure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.” *See* <https://www.opm.gov/media/yvhl1r3i/opm-memo-initial-guidance-regarding-trump-executive-order-defending-women-1-29-2025-final.pdf>.
15. On January 31, 2025, Secretary of Defense Pete Hegseth issued a memorandum (the “Hegseth Memorandum”) for senior Pentagon leadership, commanders of the combatant commands, and Defense agency and DOD field activity directors. The Hegseth Memorandum states that the “president has given us our marching orders in his Executive Order 14168” and that “[e]ffective immediately, the Department of Defense will remove all traces of gender ideology.” The Hegseth Memorandum directed all DOD components, including the National Guard Bureau in which Complainant is employed, to “[e]nsure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.” The Hegseth Memorandum directed the Office of the Undersecretary of Defense for Personnel and Readiness to “send a task and oversee implementation of these actions.” *See* [https://www.af.mil/Portals/1/documents/2025SAF/2025013_-_SD_Memo_-_Defending_Women_\(002\).pdf](https://www.af.mil/Portals/1/documents/2025SAF/2025013_-_SD_Memo_-_Defending_Women_(002).pdf).
 16. On January 31, 2025, Darin S. Selnick, performing the Duties of the Under Secretary of Defense for Personnel and Readiness, issued a memorandum for all Department of Defense civilian employees (the “Selnick Memorandum”) regarding “Department of Defense Implementation of Executive Order 14168, ‘Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,’” referencing the Executive Order and Ezell Memorandum, and stating that the “Department of Defense will take prompt action to ensure that all programs and activities align with [the] principles” of the Executive Order. *See* https://www.dcpas.osd.mil/sites/default/files/2025-02/departement_of_defense_implementation_of_eo_14168-defending_women_from_gender_ideology_extremism_and_restoring_biological_truth_to_the_federal_government.pdf.
 17. On February 2, 2025, Colonel Matthew Garrison, Chief of Joint Staff for the Illinois National Guard, distributed a “quick reference guide on the executive orders and subsequent [National Guard Bureau] guidance with relevance to ILNG,” prepared by the Illinois National Guard Human Resource Office, entitled “ILNG-HRO, EO-PM Summary Impact,” to all full-time employees of the Illinois National Guard. That document summarized the Executive Order, noting that it required the agency to “ensure intimate spaces are designated by biological sex,” and that the Illinois National Guard would “need to confirm compliance with . . . restrooms.”
 18. On February 28, 2025, General Steven S. Nordhaus, Chief of the National Guard Bureau, issued a Memorandum for the Adjutants General and the Commanding General of the District of Columbia (the “Nordhaus Memorandum”) regarding “Actions on Defending

Women Executive Order” referencing the Ezell Memorandum and Hegseth Memorandum, directing completion by March 28, 2025 of actions including “[e]nsur[ing] that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.”

19. The Ezell Memorandum, Hegseth Memorandum, Selnick Memorandum, and Nordhaus Memorandum are referred to as the “Implementing Memoranda.”

Complainant’s Experience of Unlawful Discrimination

20. Pursuant to a policy ordered by President Donald Trump and implemented by Respondents the National Guard Bureau, Office of the Secretary of Defense, and the U.S. Office of Personnel Management, Complainant has been instructed by supervisors within her chain of command that she may not use women’s bathroom and exercise facilities that align with her gender in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (Title VII).
21. If Complainant uses the women’s bathroom and exercise facilities that align with her gender, the National Guard Bureau could discipline her for violating the administration’s policy, the Implementing Memoranda and her supervisors’ instructions.
22. While prohibiting Complainant from using a facility that aligns with her gender constitutes unlawful sex discrimination regardless of the availability of single-user bathrooms, of the twelve National Guard field offices that Complainant is required to regularly visit as part of her job, eight do not have a single-user bathroom. Several of the buildings on the campus of the Illinois National Guard Headquarters (Camp Lincoln), where Complainant works and is required to attend meetings or otherwise spend prolonged periods of time, have no single-user bathroom. Because it is challenging to use a single-sex bathroom in a different building when Complainant is working at Camp Lincoln and often impossible to use a single-sex bathroom when Complainant travels for work to other National Guard field offices, Complainant has no way of avoiding the effects of the Executive Order and its implementing memoranda; she must use a bathroom that does not correspond with her gender identity or not use the bathroom at all. But even if single-user bathrooms were uniformly available, that would be legally irrelevant. *See Lusardi v. Dep’t of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756, at *8-9 (Apr. 1, 2015) (finding that the availability of “a private facility instead of a common one” is nothing more than “a temporary compromise” and “the employee retains the right under Title VII to use the facility consistent with his or her gender”).
23. Complainant’s supervisor suggested that Complainant limit the duration of her visits to field offices without a single-user bathroom so that she does not need to use a bathroom. That is infeasible because such visits require her to spend four or more hours at each field office to fulfill her Guard responsibilities, which include ensuring that family assistance centers are running properly.
24. Prior to the Executive Order and its Implementing Memoranda, Complainant used the women’s bathrooms and exercise facilities at Camp Lincoln and other National Guard

facilities without any issues raised by other women. But even if other women would prefer that Complainant not use a women's bathroom or exercise facility, that would be legally irrelevant. *Lusardi*, 2015 WL 1607756, at *9 (“[S]upervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment. Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by gender stereotypes, or by the desire to accommodate other people's prejudices or discomfort.”).

25. Respondents' Implementing Memoranda and instructions prohibiting Complainant from using women's bathrooms and exercise facilities have injured Complainant, causing emotional distress.
26. Complainant would feel unsafe, humiliated and degraded using a men's bathroom, which does not align with her gender. Indeed, the Diagnostic and Statistical Manual of Mental Disorder (5th ed.) recognizes that being forced to use a bathroom that does not align with a person's gender identity can cause gender dysphoria, a mental health condition that can arise when someone experiences clinical distress due to the incongruence between their sex assigned at birth and gender identity.
27. If Complainant used the men's bathroom, it would be disruptive to campus operations at Camp Lincoln. Complainant dresses and presents herself like any other woman. Individuals seeing her enter the men's bathroom might try to prevent her from doing so or physically harm her, as has happened to transgender people in other communities. Others may ask her about her reason for using the bathroom, which would cause emotional distress, including humiliation, discomfort, or embarrassment.
28. Intersex people are similarly situated to transgender people in that being forced to use a bathroom based on inaccurate definitions of “sex” that does not align with their gender identity will cause emotional distress including humiliation and pose safety risks.
29. The above description is a short summary of the facts and is not intended to be an exhaustive recitation.

Satisfaction of Procedural Requirements

30. On February 11, 2025, Complainant contacted an EEO counselor. This contact with an EEO counselor occurred within 45 days of the discriminatory conduct which began on January 20, 2025, as required by 29 C.F.R. § 1614.105(a)(1).
31. Complainant met an EEO counselor on February 13, 2025 and completed an Initial Interview/Pre-Complaint Intake Form. The Intake Form identifies Secretary of Defense Hegseth and OPM Director Ezell as the individuals who had discriminated against her, and January 20, 2025 as the date of the discriminatory event. The Intake Form identifies “the Jan 20th Executive Order ‘Defending Women From Gender Ideology,’ the Jan 31st Memorandum For All Department of Defense Civilian Employees ‘DOD Implementation of EO 14168,’ the Feb 2nd ILNG-HRO EO-PM Summary Impact, and the January 31st OPM Memo ‘Initial Guidance Regarding Trump Executive Order Defending Women’” as the discriminatory conduct because “these documents combined [to] make it policy

that I can no longer use the women-only facilities to which I am legally entitled (restrooms, locker rooms, etc.) and further they dictate that I must be administratively referred to and treated as male, which is in direct contradiction to my legal status as a woman and my protected gender identity.” Complainant therefore raised in precomplaint processing with an EEO counselor all of the issues raised in this complaint as required by 29 C.F.R. § 1614.107(a)(2).

32. This complaint is timely because Complainant received the notice of her right to file a discrimination complaint on April 21, 2025 and filed this complaint within fifteen days of receiving such notice as required by 29 C.F.R. § 1614.106(b).
33. This complaint is intended to exhaust all potential individual and class-based sex discrimination claims, Fifth Amendment equal protection claims, and Administrative Procedure Act claims under the Civil Service Reform Act (CSRA), Pub. L. No. 95-454, 92 Stat. 1111, and Title VII regarding sex discrimination against transgender and intersex federal employees pursuant to the Executive Order and the Implementing Memoranda on behalf of Complainant and the class.

Charge of Discrimination: Violation of Title VII

34. Title VII states that “[a]ll personnel actions affecting [federal] employees or applicants for employment . . . shall be made free from any discrimination based on . . . sex.” 42 U.S.C. § 2000e-16(a).
35. In *Bostock v. Clayton County*, 590 U.S. 644, 651–52 (2020), the Supreme Court of the United States held that Title VII’s prohibition against employment discrimination “because of ... sex” encompasses discrimination based on sexual orientation and gender identity.
36. In *Macy v. Dep’t of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 12, 2012), the EEOC ruled that discrimination based on transgender status is sex discrimination in violation of Title VII, and in *Lusardi v. Dep’t of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015), the EEOC held that (i) denying an employee equal access to a common restroom corresponding to the employee’s gender identity is sex discrimination; (ii) an employer cannot condition the right of access to a common restroom corresponding to the employee’s gender identity on the employee undergoing or providing proof of surgery or any other medical procedure; and (iii) an employer cannot avoid the requirement to provide equal access to a common restroom by restricting a transgender employee to a single-user restroom instead.
37. Consistent with *Macy* and *Lusardi*, in *Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 135 (E.D. Pa. 2020), the court held that a transgender employee plausibly alleged a violation of Title VII based in part on being prevented from using a bathroom that aligned with her gender.
38. The EEOC’s Enforcement Guidance on Harassment in the Workplace, EEOC Notice 915.064 (Apr. 29, 2024), <https://www.eeoc.gov/laws/guidance/enforcement-guidance->

[harassment-workplace](#), provides that “the denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity” violates Title VII.

39. Courts have held that the Equal Protection Clause and other federal civil rights statutes banning sex discrimination require that transgender individuals be permitted to use bathrooms that align with their gender identity. *See A.C. v. Metro. Sch. Dist. of Martinsville*, 75 F. 4th 760, 764-69 (7th Cir. 2023); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F. 3d 586, 593 (4th Cir. 2020); *but see Roe by & through Roe v. Critchfield*, No. 23-2807, 2025 WL 865721, at *7 (9th Cir. Mar. 20, 2025) (rejecting facial challenge).
40. Under *Bostock*, *Doe*, *Macy*, and *Lusardi*, and under the EEOC’s own Enforcement Guidance, Respondents’ Implementing Memoranda, instructions, exclusion from bathrooms and exercise facilities that align with Complainant’s gender identity of a woman is sex discrimination and violate Title VII.

Violation of The Fifth Amendment Right to Equal Protection

41. The same conduct described above that violates Title VII also violates the Fifth Amendment to United States Constitution by discriminating on the basis of sex and on the basis of transgender status.
42. The Fifth Amendment provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.” The Supreme Court has held that the Due Process Clause includes a guarantee against the United States of equal protection of the laws equivalent to that guaranteed against the States by the Equal Protection Clause of the Fourteenth Amendment.
43. Exclusion from a bathroom that aligns with Complainant’s gender identity violates the Fifth Amendment’s equal protection guarantee by discriminating on the basis of sex. The Executive Order and the Implementing Memoranda draw a facial sex-based classification that cannot be justified under the requisite heightened scrutiny or under any standard of constitutional review.
44. The Executive Order and Implementing Memoranda define “female” as a “person belonging, at conception, to the sex that produces the large reproductive cell” and “male” as a “person belonging, at conception, to the sex that produces the small reproductive cell,” and then restricts access to bathrooms based on those definitions of “male” and “female.” That is a sex classification.
45. By allowing access to women’s bathrooms to women who meet the Executive Order’s definition of female but denying it to women who do not, and by allowing access to men’s bathrooms to men who meet the Executive Order’s definition of male but denying it to men who do not, the Executive Order and Implementing Memoranda facially classify based on sex.
46. The Executive Order and Implementing Memoranda were implemented at least in part because of, and not simply in spite of, their adverse effects on the ability of people to

depart from overbroad expectations about sex. That, too, warrants heightened scrutiny as a sex classification.

47. The sex classification in the Executive Order and Implementing Memoranda cannot be justified under the requisite heightened scrutiny or any level of equal protection scrutiny. The sex classification in the Executive Order and Implementing Memoranda is not substantially related to an important government purpose. Reversing the previous government policy permitting government employees and others to use the bathrooms in government facilities that align with the user's gender identity and replacing it with a policy that requires the use of bathrooms that are not consistent with the user's gender identity does not rationally advance any legitimate government interest – let alone substantially advance an important governmental objective.
48. In addition, the Executive Order and Implementing Memoranda are premised on assumptions, expectations, stereotypes, or norms about the nature of sex, including that it is entirely determined by the definitions of male and female utilized by the Executive Order and Implementing Memoranda, and their insistence that sex can only be a binary characteristic (i.e., either male or female) notwithstanding that for some people it is not exclusively one or the other. Under the Executive Order and Implementing Memoranda, Complainant and other members of the proposed class Plaintiffs are precluded from using a bathroom that aligns with their gender identity, exposing them to risks of serious harms due to the assumption, expectation, stereotype, and norms that a person defined by the Executive Order and Implementing Memoranda as male must live and present as male, and a person so defined as female must live and present as female. Complainant and other members of the class do not adhere to that assumption, expectation, stereotype, and norm, and the Executive Order and Implementing Memoranda denies them the ability to use a bathroom that aligns with their gender identity entirely on that basis. If Complainant and other members of the class belonged, at conception, to the sex that produces a different size reproductive cell and adhered to the assumption, expectation, stereotype, and norm of such a sex, the Executive Order and Implementing Memoranda would permit them to use a bathroom that aligned with their gender identity.
49. The Executive Order and Implementing Memoranda also create classifications based on transgender status, and those classifications cannot be justified under the requisite heightened scrutiny or under any standard of constitutional review.
50. The Executive Order and Implementing Memoranda deny transgender people, but not cisgender people, the ability to use a bathroom that aligns with their gender identity, risking discrimination, harassment, and violence solely because they are transgender. The Executive Order and Implementing Memoranda therefore facially treat people differently on the basis of being transgender.
51. Even if the Executive Order and Implementing Memoranda did not facially classify based on transgender status, they were implemented at least in part because of, and not simply in spite of, their adverse effects on transgender people.

52. Classifications based on transgender status independently warrant heightened scrutiny. Transgender individuals as a group possess all the indicia of a suspect or quasi-suspect class that have been identified by the Supreme Court as requiring courts to apply heightened scrutiny. Transgender people have obvious, immutable, or distinguishing characteristics that define that class as a discrete group and these characteristics bear no relation to transgender people's abilities to perform in or contribute to society. Transgender people have historically been subject to discrimination across the country and remain a small minority of the American population that lacks the political power to protect itself through the political process. Gender identity is a core, defining trait that cannot be changed voluntarily or through medical intervention, and is so fundamental to one's identity and conscience that a person should not be required to abandon it as a condition of equal treatment.
53. Forcing people to use a bathroom based on whether they belonged at conception to a sex that produces a particular size reproductive cell does not substantially advance an important governmental interest.
54. Further, the Executive Order and Implementing Memoranda as applied fail any level of equal protection scrutiny because they were motivated by animus against transgender people, as illustrated both by the context of the Executive Order's promulgation and the text of the Executive Order itself. President Trump and members of his Administration have repeatedly made derogatory and extreme comments about transgender people, including linking them as a class to violence and sexual predation. The Executive Order itself wrongly states that those who identify as transgender are "ideologues who deny the biological reality of sex [and] have increasingly used legal and other socially coercive means to permit men to self-identify as women and gain access to intimate single-sex spaces and activities designed for women, from women's domestic abuse shelters to women's workplace showers." Executive Order § 1. It repeatedly links being transgender with seeking to harm women. *See id.* There is no empirical support for these assertions, and they are deeply offensive to and dehumanizing to the hundreds of thousands of transgender Americans who exist in every part of this country.

Violation of The Administrative Procedure Act

55. The same conduct described above that violates Title VII and the Fifth Amendment to United States Constitution by discriminating on the basis of sex and on the basis of transgender status also violates the Administrative Procedure Act (the "APA").
56. The APA, 5 U.S.C. §§ 500 *et seq.*, provides that courts "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... contrary to constitutional right, power, privilege, or immunity" 5 U.S.C. § 706(2). The APA also provides that courts "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...." 5 U.S.C. § 706(2).
57. The Executive Order is, by its terms, binding on the Respondents, and as publicly reported and recounted above, the Respondents have already taken concrete steps to

implement the Executive Order. The Implementing Memoranda constitute a final agency action under the APA. As a result of that action, Complainant and other members of the Class are prohibited from using bathrooms that align with their gender identity.

58. For the reasons described in this Complaint, the Implementing Memoranda and any agency actions taken under the Executive Order are “contrary to constitutional right, power, privilege, or immunity,” 5 U.S.C. § 706(2)(B), and therefore must be held unlawful and set aside. In particular, as described above, those actions violate the Due Process Clause of the Fifth Amendment for multiple independent reasons.
59. Agency actions taken under the Executive Order are also “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), for multiple independent reasons.
60. The agency actions taken under the Executive Order are “not in accordance with law” because they violate Title VII for the reasons described above.
61. The challenged agency actions are also arbitrary, capricious, and an abuse of discretion because they are irrational and unreasonable:
 - a) The classifications imposed by Implementing Memoranda (as mandated in the Executive Order) are not based on scientific or medical knowledge or evidence. To the contrary, they contradict current scientific and medical understandings and are based on an animus-laden view of sex, gender identity, and being transgender, nonbinary, or intersex, that is divorced from reality. Even though medical and scientific evidence—and the lives of millions of people—attests to the existence of transgender, nonbinary, and intersex people, the Implementing Memoranda and Executive Order sweep that evidence aside in favor of empty rhetoric unmoored from facts.
 - b) The Implementing Memoranda (per the Executive Order) also define “male” and “female” as a person who “at conception” “belong[s]” to the sex that produces the large or small reproductive cell – but embryos with either XX or XY chromosomes have undifferentiated reproductive cells during the initial period after conception.
 - c) In addition, grouping all people into “male” and “female” based on which reproductive cell is likely to be produced ignores the established biological reality that some individuals are intersex and do not, at conception, belong to a sex that produces either large or small reproductive cells.
 - d) Requiring sex designations based upon the sex a person “belong[s]” to “at conception” based upon the reproductive cells they are likely to produce does not further any legitimate governmental interest.
62. Further, the challenged agency actions are arbitrary, capricious, and an abuse of discretion because they are unsupported by a reasoned explanation:

- a) The Respondents have provided no meaningful explanation for their removal of the option for people to use a bathroom designated for their sex as they live and express it, nor does the Executive Order do so.
- b) The Respondents have provided no meaningful explanation for their attempt to proclaim it the policy of the United States that transgender, nonbinary, and intersex people do not exist. The Executive Order entirely fails to address any of the medical and scientific evidence demonstrating the importance of legal recognition of transgender, nonbinary, and intersex people and the medical and practical importance of permitting them to use bathrooms that align with their gender identity.
- c) Relatedly, the Respondents have failed to explain why the status quo ante – which the Respondents implemented for years before the Executive Order and Complainant and others relied on– was in any way flawed, let alone sufficiently flawed to warrant this abrupt and substantial change, nor does the Executive Order do so.
- d) The Respondents have also failed to consider or address numerous crucial aspects of the change in policy, nor does the Executive Order do so. They have failed to consider or address the effects on transgender, nonbinary, and intersex employees and the operation of the federal government.

Class Allegations

- 63. Complainant seeks to serve as the agent of a class of all transgender and/or intersex employees of the federal government, including but not limited to civilian employees of the National Guard Bureau, the U.S. Army, and the Department of Defense, pursuant to 29 C.F.R. § 1614.204(a)(3). This class complaint satisfies the requirements of 29 C.F.R. § 1614.204.
- 64. The class is so numerous that a consolidated complaint of the members of the class is impractical. While the precise number of class members is unknown, according to the Williams Institute at UCLA, approximately 0.5% of adults are transgender, and intersex people account for 1.7% of the population. That suggests that there are likely thousands of members of the class given that DOD has more than 650,000 civilian employees and the federal government has more than 1.8 million civilian employees.
- 65. There are questions of fact and law common to the class, including whether the Executive Order, Ezell Memorandum, and other actions of federal agencies have led to the exclusion from bathrooms and exercise facilities that align with the gender identity of the members of the class and whether such conduct violates Title VII on the basis of sex. The proposed class thus satisfies the requirements of 29 C.F.R. § 1614.204(a)(2)(i).
- 66. The experience of Complainant is similar to those of other transgender employees of the federal government, including but not limited to transgender employees of the National Guard Bureau, the U.S. Army, and of the Department of Defense. The proposed class thus satisfies the requirements of 29 C.F.R. § 1614.204(a)(2)(ii).

67. The claims of the agent of the class are typical of the claims of the class in that she is transgender and has been excluded from a bathroom that aligns with her gender identity by reason of the conduct of the Respondents. The proposed class thus satisfies the requirements of 29 C.F.R. § 1614.204(a)(2)(iii).
68. Complainant has no interests adverse to the unnamed class members. Further, the Complainant, the agent of the class, has retained experienced counsel with the law firm of Arnold & Porter Kaye Scholer LLP, the attorneys of the American Civil Liberties Union Foundation, the Roger Baldwin Foundation of ACLU, Inc., the American Civil Liberties Union Foundation of the District of Columbia, and Democracy Forward Foundation as her representatives. Complainant, thus, will fairly and adequately represent the interests of the class and her chosen counsel will fairly and adequately represent the class in their capacity as class counsel.
69. The proposed class thus satisfies the requirements of 29 C.F.R. § 1614.204(a)(2)(iv).

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DEPARTMENTS OF THE ARMY AND AIR FORCE
ILLINOIS ARMY AND AIR NATIONAL GUARD
1301 NORTH MACARTHUR BOULEVARD
SPRINGFIELD IL 62702-2317

NGIL-JSD-EO

11 April 2025

MEMORANDUM FOR RECORD

SUBJECT: Equal Employment Opportunity Counselors Report: LeAnne Keely Erin Withrow vs. President Donald J. Trump, Mr. Pete Hegseth, Secretary of Defense (SECDEF), Mr. Charles Ezell, Acting Director U.S. Office of Personnel Management (OPM), and General Steven S. Nordhaus, Chief of the National Guard Bureau

1. On 20 January 2025, The President of the United States issued Executive Order "Defending Women and Restoring Biological Truth to the Federal Government." The interpretation of the complainant is that she is no longer able to use the female restroom or any other "intimate space" of her gender identification as gender identity is an invalid component within the perception of ones "sex" and that as she was born biologically male, she must refer back to the use of male intimate spaces regardless of the fact she has used the female "intimate spaces" for the last seven years as both a military noncommissioned officer, now retired after honorable service, and a federal employee."
2. On 11 February 2025, Ms. LeAnne Withrow, Lead Family Readiness Specialist, contacted Mr. David Malenfant, State Equal Employment Manager (SEEM) to discuss gender/sex discrimination against the executive order. Mr. Malenfant directed Ms. Withrow to me for pre-counseling.
3. On 13 February 2025 I contacted with Ms. Withrow to explain the pre-counseling process. She was sent the Initial Interview/Pre-Complaint Intake Form and Rights and Responsibilities, which was signed and returned the same day.
4. On 14 February 2025, I emailed Ms. Withrow stating I had received her email. I also advised that Alternative Dispute Resolution can be done at any time during the pre-counseling and to let me know if she would like to go this route.
5. On 28 February 2025, the Chief, National Guard Bureau, published "Actions on Defending Women, which directed implementation of the elements outlined in the OPM Memorandum "Initial Guidance Regarding President Trump's Executive Order Defending Women", dated 29 January 2025, and the Secretary of Defense Memorandum, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," dated 31 January 2025. The CNBG implementation memo is the discriminating event Ms. Withrow is alleging in a the line of discriminating events starting with the Presidents Executive Order.
6. On 07 March 2025, Ms. Withrow had a discussion with Mr. Malenfant regarding CNGB Memo "Actions on Defending Women Executive Order", dated 28 February 2025.
7. On 17 March 2025, Ms. Withrow reached out to the Illinois National Guard Judge Advocate office regarding approval for pro-bono legal counsel. She was advised on 07 April 2025 that she was approved to receive legal representation by the American Civil Liberties Union. Upon

NGIL-JSD-EO

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approval of representation, she reached out to me to confirm timelines, to seek an end to pre-counseling, and request to file a formal complaint.

8. On 10 April 2025, I emailed Ms. Withrow additional questions on her contact with HRO and her supervisor regarding utilization of private spaces “bathrooms” and other areas. Below are the questions and responses.

(a) SFC McCrary: Was there specific guidance/policy given from the agency (Illinois National Guard) that stated employees were required to utilize restrooms based on their birth sex?

(b) Leanne Withrow: The ALL-IL HRO Message (attached) indicates that the ILNG “Will need to confirm compliance with media, pronouns, restrooms, etc.” and “ensure intimate spaces are designated by biological sex” and references the Jan 20 EO explicitly in it – that came from HRO with COL Daly undersigned on Feb. 3, 2025. Additionally, the EO’s and the DoD guidance both specifically reference civilians, and the CNGB dated Feb 28, 2025, directs compliance with the definitions provided in the previous references. It explicitly states that my biological sex is set at birth, that being transgender essentially isn’t real, and that I am to be required to use the bathroom consistent with my birth sex, not my gender or gender identity.

(c) SFC McCrary: Did you contact HRO on the policy from OPM and SECDEF? Did HRO contact you?

(d) Leanne Withrow: OSD and OPM sent me the memorandum and guidance directly to my work email when they sent it out to the full force as a whole. The ALL-IL HRO documents was also forwarded to me through Mr. Legler when it came out. The only part I didn’t get directly from either OSD or OPM or HRO was the CNGB Memo which I got from Dave on March 7th and the EO’s which of course I was made aware of via news and also the White House Website.

(e) SFC McCrary: Did your supervisor advise you where the gender-neutral restrooms are located on Camp Lincoln? Were you told by your supervisor that you were required to use them? Who is your supervisor?

(f) Leanne Withrow: Mr. Legler is my direct supervisor, and he and I did sit down and try to plan out access to single use restrooms that were available to male or female here at Camp Lincoln. We identified that many of the satellite offices I am required to visit do not have single use restrooms though. He has been very supportive and helpful. He has not explicitly told me I have to use any specific bathroom but has expressed care to make sure I remain safe.

9. Ms. Withrow requested the following resolution:

- a. Recession of all policies regarding Executive Order 14168.
- b. Written policy re-establishing her ability to utilized gender facilities based on her legal gender status “female”.

NGIL-JSD-EO

SUBJECT: Equal Employment Opportunity Counselors Report: LeAnne Keely Erin Withrow vs. President Donald J. Trump, Mr. Pete Hegseth, Secretary of Defense (SECDEF), Mr. Charles Ezell, Acting Director U.S. Office of Personnel Management (OPM), and General Steven S. Nordhaus, Chief of the National Guard Bureau

c. Administrative data not changed to “male”.

d. Continue to be legally defined and protected as a female class.

10. Ms. Withrow is filing a formal complaint based on the publication of NGB’s memo on 28 February 2025, “Actions on Defending Women Executive Order. She is within the 45 days of the last alleged discriminating event and considered timely. Her complaint is against the President of the United States and the Executive Order and the subsequent heads of each subordinate entity enforcing the Executive Order through their own implementation guidance, to include Mr. Pete Hegseth, Secretary of Defense, and Chief, National Guard Bureau, General Steven S. Nordhaus

11. On 10 April 2025 I closed out my final interview when I provided Ms. Withrow with the NGB Form 713-5-R. I assisted Ms. Withrow in forming her allegations within the prescribed method and received the formal complaint on 11 April 2025.

12. Questions regarding this memorandum can be directed to SFC Erica McCrary, Illinois National Guard Equal Employment Counselor, at erica.l.mccrary.mil@army.mil or 217-761-3956.

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ERICA L MCCRARY
SFC, ILARNG
Equal Employment Counselor

Encls

1. Pre-Complaint Intake Worksheet
2. NGB Form 713-5-R

Subject: Notice of Right to File a Discrimination Complaint

From: Erica L. McCrary, EEO Counselor

To: Ms. LeAnne Withrow

Date: 21 April 2025

1. This letter is your notification that the final counseling interview was held in connection with the matter you presented to me as an EEO Counselor. You initially brought this matter to the attention of the agency on 11 February 2025. You initially met with me on 13 February 2025 to discuss your allegations of discrimination on the basis of Sex/Gender.

2. This is to inform you that because the dispute that you brought to my attention has not been resolved to your satisfaction, you are now entitled to file an individual or class-based discrimination complaint based on race, color, religion, sex, national origin, physical or mental disability, age, genetic information, and/or reprisal. If you file a complaint, it must be in writing, signed, and filed WITHIN FIFTEEN (15) CALENDAR DAYS AFTER RECEIPT OF THIS NOTICE, with any of the following officials authorized to receive discrimination complaints:

- TAG
- HRO
- SEEM

3. A formal complaint can be filed in person or by mail. The formal complaint shall be deemed timely if it is physically received or postmarked before the expiration of the 15-day filing period. Your complaint will be processed by the State Equal Employment Manager for the Illinois National Guard.

4. You should make your formal complaint by using NGB Form 713-5-R; a copy of NGB Form 713-5-R is attached hereto. The complaint should state clear and specific issues that form the basis for the complaint. The complaint must be specific and contain only those issues either specifically discussed or directly related to issues discussed in your EEO counseling. Each issue must contain the specific act or personnel action that you believe was discriminatory, the date of the occurrence, and the basis for the alleged discriminatory act or action. If your issues are not clear or specific, or do not contain this information, you will be required to clarify your issues before the complaint can be processed. If you need assistance in completing NGB Form 713-5-R, you may contact your EEO counselor.

5. The complaint must also state whether you have filed a grievance under a negotiated grievance procedure or an appeal to the Merit System Protection Board on the same subject matter and, if so, the date it was filed.

6. If you retain a representative, you must provide his or her name, address, and telephone number to the State Equal Employment Manager. You must indicate whether your representative is an attorney. You and your designated representative will receive a written notice of receipt of your formal complaint.

Sincerely,
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Erica L. McCrary
EEO Counselor

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Enclosure

1. NGB Form 713-5-R