

# Congress of the United States

Washington, DC 20515

November 20, 2023

The Honorable Gina Raimondo  
Secretary  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230

The Honorable Robert L. Santos  
Director  
U.S. Census Bureau  
4600 Silver Hill Road  
Washington, DC 20233

**RE: 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 Number USBC-2023-0007)**

Dear Secretary Raimondo and Director Santos:

We, the undersigned members of the U.S. House of Representatives, write to express our strong support for the Census Bureau's proceeding to test questions on sexual orientation and gender identity as part of the American Community Survey (ACS). We are encouraged by the Census Bureau's proposals to ensure that LGBTQ+ persons are properly counted in the collection of the vital housing and socioeconomic data collected by the ACS. Importantly, the scale of the data collected by the ACS allows for data disaggregation which is crucial for intersectional analyses of disparities faced among segments of the LGBTQ+ community.

As members of Congress, comprehensive data on the communities we represent, including our LGBTQI+ constituents, would better inform our work to address the disparities in health, housing, employment, and education that our constituents confront. These data are crucial to our ability to craft evidence-based legislation and design programs and services that positively impact the health and well-being of LGBTQI+ and other underserved communities. ACS data inform trillions of dollars of federal funding for such programs.

We support the Census Bureau proceeding with the 2024 test of sexual orientation and gender identity measures in accordance with the established, deliberative process for adding new or modified content to the ACS.<sup>1</sup> Most recently, a 2022 Department of Justice letter<sup>2</sup> identified the statutory and regulatory needs for the ACS to include sexual orientation and gender identity (SOGI) measures, including for the purposes of enforcing prohibitions against discrimination, such as under Title VII of the Civil Rights Act of 1964 (Title VII);<sup>3</sup> helping administer grants; planning education efforts around prohibitions on discrimination; and better addressing anti-LGBTQ+ hate crimes. The Census Bureau and Office of Management and Budget determined this request has legal merit, and we support the Census Bureau moving forward with the testing phase to evaluate how SOGI measures perform on the ACS.

As part of its efforts to expand LGBTQI+ data collection, we strongly encourage the Census Bureau to work with federal agencies to identify their needs for ACS data on intersex populations in order to proceed with testing and adding a standalone measure about variations in sex characteristics. Adding questions that allow for the identification of people with intersex traits is crucial for better understanding and remedying health disparities for intersex people, many of which are driven by nonconsensual, medically unnecessary interventions to alter natural variations in genital appearance or reproductive anatomy and a lack of medical training and cultural competence on intersex issues.

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<sup>1</sup> See, *How is New Content Added to the American Community Survey?*, Movement Advancement Project (2023), <https://www.mapresearch.org/file/Fact-Sheet-New-Content-ACS.pdf>.

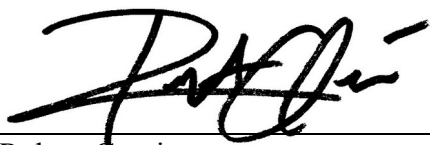
<sup>2</sup> Kristen Clarke, "Letter to Albert E. Fontenot, Jr. and Victoria Velkoff," Dec. 9, 2022 (on file with author).

<sup>3</sup> The U.S. Supreme Court affirmed in *Bostock v. Clayton County* 590 U.S. \_\_\_\_ (2020), that the prohibition on sex discrimination in Title VII extends to discrimination based on sexual orientation and gender identity. The Biden Administration has made clear that this holding should be applied to all federal laws prohibiting sex discrimination. Exec. Order 13988, 86 Fed. Reg. 7,023–25 (Jan. 20, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>. The Department of Justice has also made clear that this holding "applies with equal force to discrimination against intersex people" based on their sex characteristics. Department of Justice, Title IX Legal Manual (updated Aug. 21, 2021), <https://www.justice.gov/crt/titleix#Bostock>.

As policymakers across the country have been increasingly targeting LGBTQI+ people and their families, enacting discriminatory bills into law, and attempting to suppress LGBTQI+ narratives in the public domain, some people may be hesitant to identify themselves or their family members as LGBTQI+ on a survey conducted by the federal government. We are encouraged that the Bureau has recognized this and suggested numerous additional supports to protect individuals' privacy and confidentiality when completing the ACS. Additionally, to address these concerns, it is especially important that the Census Bureau clearly communicate that the U.S. Census Bureau, its employees, and the data it gathers, including data collected through the ACS, are subject to the safeguards outlined in the Census Act. Emphasizing these confidentiality and privacy protections to respondents will bolster accurate reporting and data quality.<sup>4</sup>

Better data leads to better policies, programs, resource allocation, and service delivery. We are grateful for Census Bureau's plans to proceed with SOGI questions in 2024. Improving data collection on the needs and experiences of LGBTQI+ communities through the ACS will not only enable better enforcement of our civil rights laws, but will also provide policymakers, including ourselves and our other colleagues in Congress, access to more comprehensive data to better inform our policy-making decisions.

Sincerely,



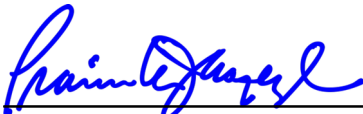
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Member of Congress



Raúl M. Grijalva  
Member of Congress



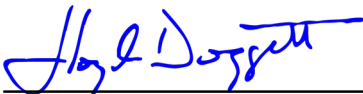
Katie Porter  
Member of Congress



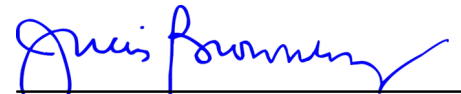
Pramila Jayapal  
Member of Congress



Barbara Lee  
Member of Congress

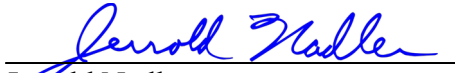



Lloyd Doggett  
Member of Congress

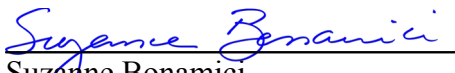



Julia Brownley  
Member of Congress

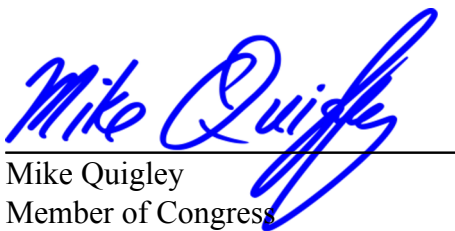
<sup>4</sup> See, e.g., Sean Cahill et al., *Do Ask, Do Tell: High Levels of Acceptability by Patients of Routine Collection of Sexual Orientation and Gender Identity Data in Four Diverse American Community Health Centers*, 9 PLoS One 1 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4157837/pdf/pone.0107104.pdf> (finding that most respondents of surveys that asked questions about sexual orientation and gender identity were willing to answer such questions. A few respondents had concerns about data privacy and others commented on the importance of training staff as to why the data was being collected).

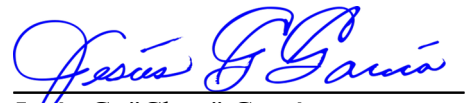
  
Jerrold Nadler  
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Becca Balint  
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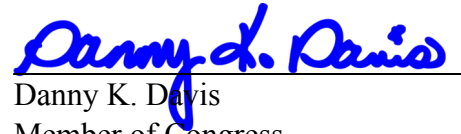
  
Mark Takano  
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Eleanor Holmes Norton  
Member of Congress



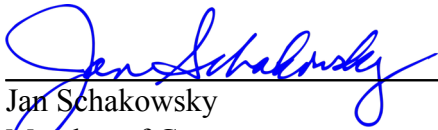
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Scott H. Peters  
Member of Congress



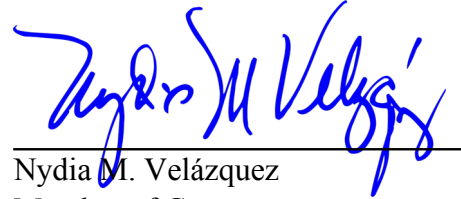
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Danny K. Davis  
Member of Congress



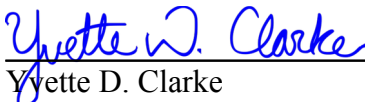
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Jan Schakowsky  
Member of Congress



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Nydia M. Velázquez  
Member of Congress



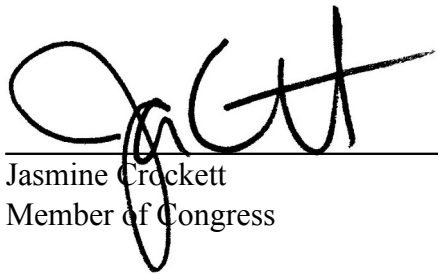
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Yvette D. Clarke  
Member of Congress



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Bonnie Watson Coleman  
Member of Congress



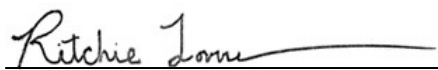
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Jasmine Crockett  
Member of Congress



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Andrea Salinas  
Member of Congress



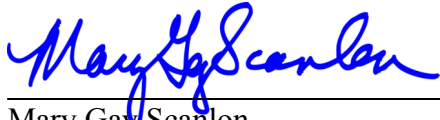
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Ritchie Torres  
Member of Congress



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Jennifer L. McClellan  
Member of Congress



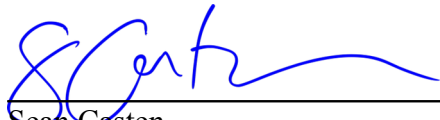
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Mary Gay Scanlon  
Member of Congress



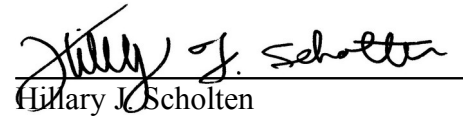
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Frederica S. Wilson  
Member of Congress



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Sean Casten  
Member of Congress



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Hillary J. Scholten  
Member of Congress



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Jim Tokuda  
Member of Congress