

# Assistant Education Secretary Catherine Lhamon Should Resign For Repeated and Willful Violations of Her Oath of Office

September 21, 2023

Catherine Lhamon previously served as Assistant Secretary for Civil Rights of the U.S. Department of Education from 2013 to 2017. One of her main functions was to enforce the 2011 Dear Colleague Letter, which drew criticism from across the political spectrum.<sup>1</sup> Despite these concerns, Lhamon was named to lead the Department of Education Office for Civil Rights in 2021, again attracting strong criticism.<sup>2</sup>

When Lhamon became a federal employee, she took this solemn Oath of Office:

*“I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same.”*

But as soon as she assumed her second tenure, Lhamon began work on a new Title IX regulation,<sup>3</sup> a policy that violated the Constitution of the United States in three ways:

## **1. Article 1, Section 1: Authorization of Congress to exercise “All legislative Powers.”**

Congress passed Title IX in 1972 with the understanding that Title IX was intended to apply to the male and female sexes.<sup>4</sup> Title IX was not intended to include protections on the basis of gender identity.

Judge Kim R. Gibson of the United States District Court for the Western District of Pennsylvania wrote:

*“Title IX’s language does not provide a basis for a transgender status claim. On a plain reading of the statute, the term “on the basis of sex” in Title IX means nothing more than male and female, under the traditional binary conception of sex consistent with one’s birth or biological sex.... The exclusion of gender identity from the language of Title IX is not an issue for this Court to remedy. It is within the province of Congress—and not this Court—to identify those classifications which are statutorily prohibited.”<sup>5</sup>*

Lhamon’s proposal to change the definition of “sex” represents a usurpation of Congressional authority.

## **2. First Amendment: “Congress shall make no law...abridging the freedom of speech.”**

In *Davis v. Monroe County Board of Education*, the Supreme Court defined sexual harassment in the educational context as conduct that is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources and opportunities.”<sup>6</sup> The 2020 Title IX regulation closely followed the language of this Supreme Court precedent.<sup>7</sup>

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<sup>1</sup> Lara Bazelon. I'm a Democrat and a Feminist. And I Support Betsy DeVos's Title IX Reforms. *New York Times*. December 4, 2018.

<sup>2</sup> KC Johnson. The Return of Catherine Lhamon Is Another Biden Betrayal. *National Review*. October 20, 2021.

<sup>3</sup><https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment>

<sup>4</sup> <https://www.heritage.org/education/report/gender-identity-policies-schools-what-congress-the-courts-and-the-trump>

<sup>5</sup> *G.G. v. Gloucester County School Board*, United States Court of Appeals for the Fourth Circuit, No. 15-2056, April 19, 2016.

<sup>6</sup> *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999). <https://supreme.justia.com/cases/federal/us/526/629/>

<sup>7</sup> 85 Fed. Reg. 30,026, 30,574. May 19, 2020.

But in 2022, the Department of Education proposed to reject the Supreme Court’s speech-protective definition of sexual harassment, proposing that speech would only need to be “pervasive” or “severe” to violate Title IX. The draft regulation defines verbal harassment as:

Any “unwelcome sex-based conduct that is sufficiently severe or pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person’s ability to participate in or benefit from the recipient’s education program or activity (i.e., creates a hostile environment).”

One federal court ruled such a definition to be “staggeringly broad.”<sup>8</sup>

### **3. Fourteenth Amendment: No State shall “deprive any person of life, liberty, or property, without due process of law.”**

Dozens of federal courts have affirmed a series of due process rights in the higher education context, including the rights to an impartial investigation, elimination of pro-complainant bias, notice to the accused, cross examination, access to evidence, and evaluation of evidence.<sup>9</sup> As Judge Robert Jonker noted in *Munoz v. Michigan State University*, “Everyone agrees that procedural due process is implicated when a public university imposes a suspension of this magnitude.”<sup>10</sup>

But Catherine Lhamon’s proposed regulation would severely weaken or eliminate the following due process protections for students accused of a Title IX infraction:<sup>11</sup>

- Independent and impartial investigations
- Unrestricted access to evidence
- Right to a live hearing and cross-examination

In addition, the proposed Title IX regulation would impose detrimental effects on other aspects of American life, including women’s sports, parental rights, as well as the gender transitioning of underage children.<sup>12</sup>

When the Senate debated the Catherine Lhamon nomination in 2021, critics warned, “*the wolf is at the door.*”<sup>13</sup> Subsequent events have confirmed this dark prediction.<sup>14</sup>

Catherine Lhamon has repeatedly and willfully violated her Oath of Office, thereby weakening our Constitution. For these reasons, the undersigned organizations hereby call for the immediate resignation of U.S. Assistant Education Secretary Catherine Lhamon.

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<sup>8</sup> *Speech First, Inc. v. Cartwright*, April 21, 2022. <https://casetext.com/case/speech-first-inc-v-cartwright>

<sup>9</sup> SAVE. Analysis of Judicial Decisions Affirming the 2020 Title IX Regulation. <https://www.saveservices.org/wp-content/uploads/2022/04/Analysis-of-Title-IX-Regulation-3.24.2022.pdf>

<sup>10</sup> <https://www.courtlistener.com/docket/18540355/parties/munoz-v-michigan-state-university/>, December 14, 2021.

<sup>11</sup> Comment of the Foundation for Individual Rights and Expression in Opposition to the Department of Education’s Proposed Regulations on Title IX Enforcement. <https://www.thefire.org/research-learn/fire-comment-docket-no-ed-2021-ocr-0166-rin-1870-aa16-091222>

<sup>12</sup> SAVEL Stop the Gender Agenda. <https://www.saveservices.org/2022-policy/network/>

<sup>13</sup> Justin Dillon and Stuart Taylor. Reinstating Catherine Lhamon at the Dept. of Education is a Mistake. <https://www.usatoday.com/story/opinion/2021/06/14/catherine-lhamons-history-dept-education-title-ix-rape-sexual-assault/7675799002/>

<sup>14</sup> [https://www.chronicle.com/article/were-making-the-same-title-ix-mistakes-again?cid=gen\\_sign\\_in](https://www.chronicle.com/article/were-making-the-same-title-ix-mistakes-again?cid=gen_sign_in)

Signed,

**National Groups (32):**

SAVE (Stop Abusive and Violent Environments)  
American Association of Evangelicals (AAE)  
AFA Action  
Amac Action  
Americans for Limited Government  
American Life & Liberty PAC  
American Principles Project  
American Values  
America's Black Robe Regiment  
Catholics Count  
Center for Military Readiness  
Citizens for Renewing America  
Conservatives of Faith  
ConservativeHQ.com  
Eagle Forum  
Global Strategic Alliance  
Katartismos Global  
Law Offices of Philip A. Byler  
Less Government  
Men and Women for a Representative Democracy  
in America  
Mission America  
National Association of Scholars  
No Left Turn in Education  
Palm Beach Freedom Institute  
60 Plus Association  
Speech First  
Strategic Coalitions & Initiatives, LLC  
Tin Fulton Walker & Owen, PLLC  
United Families International  
We the People USA PAC

Women for Democracy in America

Worldwide Organization For Women (WOW)

**State Groups (27):**

Alexander Hamilton Institute for the Study of  
Western Civilization  
American Life & Liberty PAC, Virginia  
California Association of Scholars  
Child Protection League  
Eagle Forum of Michigan  
Family Policy Institute of Washington  
Girls Deserve Privacy  
Greenwich Patriots  
Independent Women's Network, Bismarck Chapter  
Louisiana Family Forum  
Louisiana Save Our School  
Moms for Liberty, Bay County, Florida  
Moms for Liberty, Baltimore County, Maryland  
Moms for Liberty, Carroll County, Maryland  
Moms for Liberty, Cecil County, Maryland  
Moms for Liberty, Howard County, Maryland  
Moms for Liberty, Montgomery County Maryland  
Ohio Value Voters  
Protect Ohio Children Coalition  
Rhode Island Center for Freedom and Prosperity  
Roughrider Policy Center  
Tennessee Eagle Forum  
Texas Eagle Forum  
Texas Freedom Coalition  
United Against Racism in Education  
Utah Eagle Forum  
Virginia Association of Scholars