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LITIGATION UPDATE: Griffin and 16 Other AGs Fight to Stop Biden Era Attempt to Categorize Gender Dysphoria as a Disability

Griffin and AGs agree to stay case while Trump administration reviews Biden rule change

LITTLE ROCK – Attorney General Tim Griffin today issued the following update explaining a lawsuit he joined in September 2024 challenging an unlawful Biden administration rule that categorized gender dysphoria as a disability and allowed the federal government to withhold funds for those with disabilities from anyone who disagrees with the rule. Recent reporting has erroneously implied that the lawsuit seeks to repeal Section 504 of the Rehabilitation Act of 1973.

What is Section 504?

- Section 504 of the Rehabilitation Act of 1973 (1) prohibits discrimination against individuals with disabilities in federally funded programs and (2) requires employers to reasonably accommodate disabilities.
- States have to comply with Section 504 or the federal government can withdraw federal funds—like K-12 school funds, Medicaid dollars, etc.
- Federal law says that “gender identity disorders” are not disabilities under Section 504 or under the Americans with Disabilities Act.

What prompted the lawsuit?

- In May 2024, the Biden administration's Department of Health and Human Services (HHS) issued a rule that—contrary to federal law—includes “gender dysphoria” as a disability under HHS regulations.
- The rule's gender mandate could require schools and universities to allow boys to use girls' bathrooms and showers, even to live in girls' dormitories; require schools and universities to allow males to compete in girls' and women's sports; and require teachers and students to use wrong-sex pronouns.
- If states do not comply with the HHS rule's gender mandate, the Biden administration's rule would jeopardize their federal funding.

What is the lawsuit trying to do?

- 17 state attorneys general, including our office, sued to block Biden's illegal HHS rule.
- The lawsuit does NOT seek to end Section 504's disability protection for anyone covered under that statute. It simply seeks to overturn Biden's unlawful gender mandate.
- The lawsuit states that Section 504 did not allow the Biden administration to impose this gender mandate on the threat of taking away states' federal funding.
- If the states win this lawsuit, no one's disability accommodations would be taken away—the regulations would go back to what they were before May 2024.

What is the current status of the lawsuit?

- The lawsuit has been stayed while the Trump administration reconsiders the rule.

What about the claims that Count 3 of the lawsuit seeks to repeal Section 504?

- The Biden administration says that Section 504 not only gives HHS the power to impose the gender mandate, but that this 52-year-old statute required the gender mandate all along.
- We argue that the Biden administration is wrong about this. Federal law is clear that gender dysphoria is not a disability, and states cannot be forced to treat it as such in order to comply with Section 504.
- If Section 504 did somehow impose these gender-mandate obligations on states 50 years down the line, then the whole law wouldn't be constitutional under the Spending Clause (which requires states be given clear conditions on federal funding). A ruling “declaring Section 504 unconstitutional”—in the context of this lawsuit—means that HHS could not revoke state funds it oversees (e.g. Medicaid funds) for the states' failure to comply with the gender mandate.
- Again, the states DO NOT argue that Section 504 is actually unconstitutional, because we say that Section 504 DOES NOT allow for this gender mandate and CANNOT be interpreted the way the Biden administration tried to interpret it.
- This statute has been on the books for 52 years. If we wanted to try and get rid of it like some people have claimed, we could have sued anytime. But we didn't do that. We sued only after the May 2024 rule with the gender mandate.

- When President Trump took office, we agreed to stay the case while the administration reassesses the rule. Why would we have done that if our goal was to have the entire statute struck down? It makes no sense.

What relief is the lawsuit seeking?

- The requested relief was to enjoin federal government officials from withholding money from states for failure to comply with the unlawful gender dysphoria rule.
- The lawsuit does not seek to repeal Section 504.

Conclusion

The Biden administration's unlawful rule poses a legal threat to Section 504, and if enforced, it would potentially harm truly disabled students by punishing schools that refuse to conform to the unlawful final rule regarding gender dysphoria. It is the final rule classifying gender dysphoria as a disability that is being challenged by the lawsuit, NOT Section 504 itself.

About Attorney General Tim Griffin

Tim Griffin was sworn in as the 57th Attorney General of Arkansas on January 10, 2023, having previously served as the state's 20th Lieutenant Governor from 2015-2023. From 2011-2015, Griffin served as the 24th representative of Arkansas's Second Congressional District, where he served on the House Committee on Ways and Means, House Armed Services Committee, House Committee on Foreign Affairs, House Committee on Ethics and House Committee on the Judiciary while also serving as a Deputy Whip for the Majority.

Griffin is currently an officer in the Arkansas Army National Guard and holds the rank of colonel. Griffin served as an officer in the U.S. Army Reserve Judge Advocate General's (JAG) Corps for more than 28 years. In 2005, Griffin was mobilized to active duty as an Army prosecutor at Fort Campbell, Kentucky, and served with the 101st Airborne Division (Air Assault) in Mosul, Iraq.

His previous assignments include serving as the Commander of the 2d Legal Operations Detachment in New Orleans, Louisiana; the Commander of the 134th Legal Operations Detachment at Fort Bragg, North Carolina; and as a Senior Legislative Advisor to the Under Secretary of Defense for Personnel and Readiness at the Pentagon. Griffin earned a master's degree in strategic studies as a Distinguished Honor Graduate from the U.S. Army War College, Carlisle Barracks, Pennsylvania.

Griffin also served as U.S. Attorney for the Eastern District of Arkansas, and Special Assistant to the President and Deputy Director of Political Affairs for President George W. Bush; Special Assistant to Assistant Attorney General Michael Chertoff, Criminal Division, U.S. Department of Justice; Special Assistant U.S. Attorney, U.S. Attorney's Office, Eastern District of Arkansas; Senior Investigative Counsel, Government Reform and Oversight Committee, U.S. House of Representatives; and Associate Independent Counsel, Office of Independent Counsel David M. Barrett, In re: HUD Secretary Henry Cisneros.

Griffin is a graduate of Magnolia High School, Hendrix College in Conway, and Tulane Law School in New Orleans. He attended graduate school at Oxford University. He is admitted to practice law in Arkansas (active) and Louisiana (inactive). Griffin lives in Little Rock with his wife, Elizabeth, a Camden native, and their three children.

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