Congress of the United States
Washington, DC 20515

November 16, 2018

The Honorable Donald J. Trump
The President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President,

We applaud your hard work to negotiate a new trilateral free trade agreement with Mexico and Canada. Balancing the competing interests of three different countries is a monumental challenge, and we recognize your tireless efforts to protect the American worker and the American economy.

We are, however, deeply concerned by the unprecedented inclusion in the U.S-Mexico-Canada Agreement (USMCA) of sexual orientation and gender identity (SOGI) language, for the first time in a Free Trade Agreement. This language is housed in Article 23.9 and Article 23.12(5)(l)(i).

Last autumn, the Department of Justice issued a very helpful memorandum regarding the transgender employment discrimination claims. This October 2017 Memo states, "'Sex' is ordinarily defined to mean biologically male or female," and notes that "Congress has confirmed this ordinary meaning by expressly prohibiting, in several other statutes, 'gender identity' discrimination, which Congress lists in addition to, rather than within, prohibitions on discrimination based on 'sex' or 'gender.'" Additionally, encouraging recent reports indicate that the Department of Health and Human Services is working to restore the historic definition of "sex" to a person's anatomical sex at birth.

As a sovereign nation, the United States has the right to decide when, whether and how to tackle issues of civil rights, protected classes, and workplace rights.

At the same time your Administration is carrying out a cohesive agenda regarding policies surrounding sexual orientation and gender identity, in the Departments of Justice and Health and Human Services specifically, it is deeply troubling that the Office of the U.S. Trade Representative (USTR) has included contradictory language in the U.S-Mexico-Canada Agreement.

A trade agreement is no place for the adoption of social policy. It is especially inappropriate and insulting to our sovereignty to needlessly submit to social policies which the United States Congress has so far explicitly refused to accept. One wonders at the contradictory policy coming

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through USTR when other Departments under your Administration are working to come into alignment on SOGI policy.

In order to ensure U.S. compliance with this new language, the Obama Executive Orders 11478 and 11246, which added SOGI to non-discrimination policies and were strongly opposed by Members of this body, would essentially be codified. Under the terms of the USMCA, the rescinding of these Executive Orders would render the U.S. in violation of the trade agreement. If the USMCA is enacted with this SOGI language, you would lose your ability to rescind these Obama-era Executive Orders or roll back their implementing regulations to create a unified SOGI policy.

The inclusion of SOGI as part of the definition of "sex" in a trade agreement or the elevation of SOGI to the level of sex will cause unnecessary confusion in future international treaties as well as domestic laws and policies. It sets a dangerous precedent for courts and future Administrations to build upon.

Before signing the agreement in Buenos Aires on November 30, 2018, we strongly urge you to remove the SOGI language in Article 23.9 and Article 23.12(5)(l)(i) from the USMCA.

Sincerely,

Doug Lamborn
Member of Congress

Vicky Hartzler
Member of Congress

Mark Walker
Member of Congress

Mark Meadows
Member of Congress

Robert B. Aderholt
Member of Congress

Randy Hultgren
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