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AG SLATERY DISPUTES FEDERAL DIRECTIVE TO WITHHOLD NUTRITION ASSISTANCE FOR SCHOOLS, PROGRAMS THAT DON'T ADHERE TO NEW 'GENDER IDENTITY', 'SEXUAL ORIENTATION' POLICY

Nashville- Attorney General Herbert H. Slatery III is leading a coalition of 26 state attorneys general calling on President Joe Biden to withdraw the U.S. Department of Agriculture's (USDA) new guidance on sex discrimination for schools and programs that receive federal nutritional assistance. The attorneys general say recent guidance from the USDA imposes new—and unlawful—regulatory measures on state agencies and operators receiving federal financial assistance from the USDA.

On May 5th, 2022, the USDA's Food and Nutrition Service (FNS), [announced](#) it would expand its interpretation of the prohibition on sex discrimination found in Title IX to include discrimination based on sexual orientation and gender identity based on a flawed understanding of the Supreme Court's decision in *Bostock v. Clayton County*.

As a result, any state, local agency, or program that receives federal funds through The Food and Nutrition Act and the Supplemental Nutritional Assistance Program (SNAP) -administered by the USDA- must comply with this unlawful application of *Bostock* and Title IX, or lose federal funding.

“This is yet another attempt by the executive branch and unelected regulators to do what only Congress is constitutionally authorized to do: change the law,” said General Slatery. “They intentionally misread the *Bostock* decision to fit their social policy preferences and exclude the people and their elected representatives from the entire process. As Attorneys General we cannot just sit on the sidelines, and we will not.”

The National School Lunch Program services nearly 30 million schoolchildren each day, many who rely on it for breakfast, lunch, or both. Approximately 100,000 public and non-profit private schools and residential childcare institutions receive federal funding to provide subsidized free or reduced-price meals for qualifying children.

In the [letter](#), the attorneys general say expanding the concept of “discrimination on the basis of sex” to include gender identity and sexual orientation does far more than offer direction:



Herbert H. Slatery III Attorney General & Reporter

- The Guidance is unlawful because it was issued without providing the States and other stakeholders the opportunity for input as required by the Administrative Procedures Act (APA).
- The Guidance is unlawful because the USDA premised it on an obvious misreading and misapplication of the Supreme Court’s holding in *Bostock v. Clayton County*. *Bostock* expressly disclaimed application to “other federal or state laws that prohibit sex discrimination”—like Title IX and the Food and Nutrition Act—and expressly did not “prejudge any such questions.”
- The Guidance imposes new- and unlawful- regulatory measures on state agencies and operators receiving federal financial assistance from the USDA. This will inevitably result in regulatory chaos that threatens essential nutritional services to some of the most vulnerable citizens.

The letter was signed by attorneys general from the following states: Alabama, Alaska, Arkansas, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming.

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