

United States Senate

WASHINGTON, DC 20510

August 10, 2020

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Secretary Pompeo,

The right of American citizens to transmit their citizenship to their children is at the core of our identity as a nation. As such, we are deeply concerned by the growing number of reports indicating that the State Department may have deliberately altered internal guidelines regarding the processing of citizenship transmission for children born to U.S. citizens abroad in a manner disproportionately inhibiting same-sex married couples from transmitting citizenship to their children.

The crux of the issue appears to be the State Department's overriding focus on biological parentage of a child when determining eligibility for transmission, rather than the marital status of the child's parents. The Immigration and Nationality Act of 1952, which governs citizenship transmission for children born outside of the United States to American citizens, delineates different guidelines for children born "in wedlock" and "out of wedlock." The Department's insistence that a child is only born "in wedlock" if the child is biologically related to both of its married parents appears contrary to U.S. law as well as to American values. The lack of enforcement of similar strictures on opposite-sex couples raises serious constitutional concerns. The U.S. Supreme Court has clearly articulated that the U.S. government must recognize same sex marriages "on the same terms and conditions as opposite sex couples," and that it must provide them with the "constellation of benefits" associated with marriage – including equitable treatment of their children. Despite these declarations by the Supreme Court, we understand that in 2018 the State Department further restricted its guidance in the Department's Foreign Affairs Manual (FAM) in a manner that could deny same-sex couples equal treatment.

As such, we ask that the Department of State provide at the earliest opportunity:

- A briefing for Congressional staff to discuss:
 - The deliberative process behind the 2018 alteration of this language in the FAM, including a discussion of any decision memos, legal findings or impact assessments for American citizens overseas.
 - An explanation of the criteria that would prompt a Consular Officer to require that opposite-sex and/or same-sex couples demonstrate a biological link to their legal children prior to transmission of citizenship.

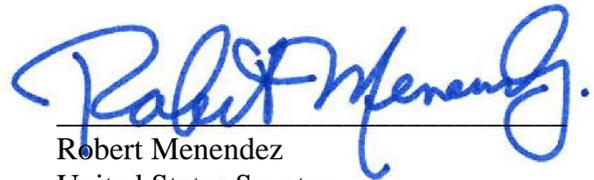
- An analysis of circumstances, including differences in policy, which could result in a denial of citizenship transmission for opposite-sex couples and/or same-sex couples as a result of their use of assisted reproductive technology.
- A schedule for the review and revision of this policy, as articulated in the Foreign Affairs Manual (FAM), in a manner that is consistent with the plain language of the statute and is not in contradiction of Supreme Court precedent.

The mission of the State Department is twofold – to advance U.S. values and national security interests, and to protect the safety of American citizens abroad. And yet the State Department’s newfound restrictions on the use of the LGBTQ pride flag, the appointment of senior USAID officials with a history of homophobic comments, and other persistent failures to support LGBTQ rights overseas and among its own staff, suggest a growing pattern of disregard for not only the U.S. government’s historic role in the protection of human rights, but also the State Department’s obligations to American citizens living overseas. In this instance and others we strongly urge the Department to closely reevaluate its approach to LGBTQ rights and ensure that it returns to alignment with American values and law.

Sincerely,



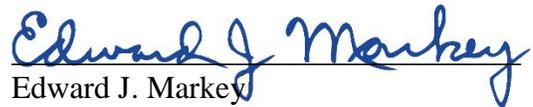
Tim Kaine
United States Senator



Robert Menendez
United States Senator



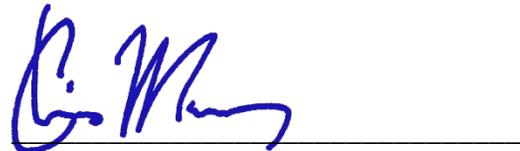
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