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Oversight Board

September 12, 2024

Re: Gender Identity Debate Video Cases

Introduction

AIDS United's mission is to end the HIV epidemic in the United States. We seek to fulfill our mission through strategic grantmaking, capacity building and technical assistance, and policy and advocacy. We have seen firsthand how the intersectionality of social injustice, discrimination, and health disparity impacts people living with HIV, and AIDS United believes that alleviating this struggle is a pivotal step toward our national well-being.

This submission responds to Meta's Oversight Board's request for public comment on cases pertaining to gender identity. The Board selected these cases to assess whether Meta's approach to moderating discussions around gender identity respects users' freedom of expression and the rights of transgender and non-binary people.

The Oversight Board has requested public comment that addresses the impacts of Meta's Hate Speech and Bullying and Harassment policies on freedom of expression around gender identity issues, and the rights of transgender people, including minors; technical challenges in enforcing bullying and harassment policies at scale, the effectiveness of self-reporting requirements and their impacts on people targeted by bullying or harassment, and comparisons to alternative enforcement approaches; and the sociopolitical context in the United States concerning freedom of expression and the rights of transgender people, especially for access to single-sex spaces and participation in sporting events.

Recommendations

As an organization that has operated in the space of LGBTQ+ rights since the beginning of the AIDS epidemic, we understand the impact of stigma and discrimination, and the criticality of external arbiters who protect public spaces for the people who rely on them. Meta has not met this need, nor has it

reached an appropriate balance between protecting users' right to exist with the rights of those who often hide behind our beloved value of free speech to spread vitriol and fear.

Meta's failure to protect LGBTQ+ users from online abuse has had negative consequences on the quality of life and well-being for HIV and LGBTQ+ communities. The company's unwillingness to adequately remedy the online abuse will continue to perpetuate violence and harm to LGBTQ+ people and people living with HIV, as well as contribute to negative health outcomes for the communities that we serve and the broader community. Meta, as a company, can do much more to protect users from online harm and create a safer online environment for the communities that are already vulnerable to discrimination and abuse.

Research has consistently shown that transgender individuals face significantly higher rates of suicidal ideation and suicide attempts compared to the general population. According to the 2015 U.S. Transgender Survey, 40% of transgender respondents reported having attempted suicide in their lifetime—a rate nearly nine times higher than that of the general U.S. population.¹ For transgender individuals living with HIV, the intersection of stigma related to both their gender identity and HIV status further worsens these risks. Allowing content that misgenders or harasses transgender people to remain on Meta's platforms not only sends a message that their identities are not respected but also reinforces the harmful narratives that contribute to mental health crises.

This is particularly dangerous for young transgender people, who are especially vulnerable to the negative impacts of online harassment and bullying. The case involving a trans minor, targeted by a post from Libs of TikTok, is a stark reminder of the life-threatening risks that such content poses. Additionally, transgender people, particularly trans women of color, also experience disproportionately high rates of violence. The Human Rights Campaign reported that at least 44 transgender or gender non-conforming people were killed in the U.S. in 2020, making it the deadliest year on record for transgender individuals.² Many of these violent acts are fueled by the same transphobia and hatred that online harassment provides space to. Exposure to hate speech, for transgender individuals, and the increase of harmful content on platforms like Meta's not only contributes to a hostile online environment but also increases their risk of being targeted in real life.

Both HIV stigma and discrimination continue to be among the many challenges that people with HIV face, leading to negative impacts on quality of life and health outcomes. HIV stigma can mean negative attitudes and beliefs about people with HIV. Stigma from HIV can lead to discrimination and affect the health and well-being of people with HIV. HIV stigma can also discourage people from getting tested,

¹ National Center for Transgender Equality. (n.d.). 2015 US Transgender Survey. National Center for Transgender Equality. <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

² Human Rights Campaign. (n.d.). *Fatal violence against the transgender and gender-expansive community in 2021*. <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-expansive-community-in-2021>

sharing their status and accessing HIV services. While stigma refers to an attitude or belief, discrimination is the behavior that results from those attitudes or beliefs. HIV discrimination means treating people with HIV differently than those without HIV, including asking if someone is “clean” or calling them “dirty” if they have HIV, refusing casual contact with someone with HIV, and assuming someone has HIV because of their identity or behaviors.³

Meta needs to do more to protect vulnerable members of our community, particularly people living with HIV and LGBTQ+ people, from online hate speech because Meta’s failure to do so increases the likelihood of multiple forms of harm—both mental and physical. Even more so for people who hold multiple marginalized identities. HIV-related stigma and discrimination have detrimental effects on people living with HIV. HIV stigma is often associated with psychological distress, such as shame, depression, anxiety, suicidal ideation, and quality of life.⁴ Hate content online towards people with HIV and LGBTQ+ people that violates Meta’s Community Guidelines can also certainly contribute to psychological distress, and Meta’s failure to properly intervene perpetuates the harm.

The United States has seen a rise in anti-LGBTQ+ political attacks in recent years, which has aided in promoting a culture of discrimination against LGBTQ+ people across the country. Examples of harmful legislation include efforts to remove gender identity from non-discrimination policies, efforts to prevent transgender and gender-expansive youth from accessing gender-affirming medical care, including counseling, and creating overly broad religious exemptions that undermine non-discrimination protections.⁵ These anti-LGBTQ+ attacks have created a more hostile environment and have enabled stigma, discrimination and violence against LGBTQ+ people. Social media is used as a vehicle to encourage or incite hate against LGBTQ+ people, so Meta must also do a better job to ensure its moderation policies do not allow hate speech to evade detection and continue to harm LGBTQ+ people. Meta has a responsibility to not allow hate speech to persist on its platform.

These attacks can also have an impact on the mental health of LGBTQ+ people, as transgender and non-binary people could be more susceptible to elevated mental health risks including depression, anxiety, and suicide. The Trevor Project’s crisis hotline received nearly 4,000 calls from transgender and non-binary youth in Texas in 2021 after state lawmakers introduced several discriminatory pieces of legislation against transgender and non-binary people.⁶ With very limited existing legal LGBTQ+ protections, Meta’s failure to adequately address anti-LGBTQ+ attacks on its platform exacerbates the harm against the community and sends a message to LGBTQ+ people that they are not worthy of protection.

³ U.S. Centers for Disease Control and Prevention. Stigma and HIV. <https://www.cdc.gov/hiv/health-equity/index.html>

⁴ National Institutes of Health. *Understanding Global HIV Stigma and Discrimination: Are Contextual Factors Sufficiently Studied?* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6603743/>

⁵ Human Rights Campaign. *Dismantling a Culture of Violence*. <https://reports.hrc.org/dismantling-a-culture-of-violence>

⁶ Ibid.

Even though HIV can affect anyone, HIV does affect some communities more than others. Communities of color, specifically Black and Hispanic/Latino communities, and LGBTQ+ people are disproportionately impacted by HIV compared to the rest of the population. For example, according to the U.S. Centers for Disease Control and Prevention (CDC), in 2021, Black/African American individuals aged 13 and older represented approximately 12% of the U.S. population but accounted for 40% of people with HIV. Hispanic/Latino individuals aged 13 and older represented 18% of the population but accounted for 25% of people with HIV.⁷ LGBTQ+ people are also disproportionately impacted by HIV, with key subpopulations including gay and bisexual men and transgender women. Gay and bisexual men accounted for about 23,100 (66%) new HIV diagnoses in 2019.⁸ Transgender people, specifically transgender women of color, are disproportionately affected by HIV, despite making up a smaller segment of the population. A CDC study where surveys conducted in seven U.S. cities found that four in 10 transgender women had HIV, with stark racial and ethnic differences in HIV rates among respondents. Sixty-two percent of Black transgender women and 35% of Hispanic/Latina transgender women surveyed had HIV, compared to 17% of white transgender women.⁹

AIDS United and others in the HIV movement work tirelessly to fight against HIV stigma and discrimination. HIV stigma serves as a major barrier to optimal health care and treatment for people living with HIV. People with HIV experiencing stigma in healthcare settings also serves as a barrier to optimal treatment. Numerous studies suggest that experiences of HIV-related stigma resulted in lower access to HIV treatment, low utilization of HIV care services, poorer antiretroviral therapy (ART) adherence, and thus poorer treatment outcomes.¹⁰

In addition to people with HIV, HIV stigma and discrimination also impacts the health of people not living with HIV. HIV stigma prevents people from getting tested for HIV to know their status and from speaking openly with their sexual partners about safer sex methods. If people with HIV do not know their status, they will not engage in HIV treatment and will not achieve viral suppression. When people with HIV take their HIV medication as prescribed, the HIV medicine reduces the amount of HIV in their blood (also called your viral load) to a very low level, which is called viral suppression.¹¹ Viral suppression is critical for people with HIV to maintain healthy outcomes and live long lives. Viral suppression also prevents a person with HIV from transmitting HIV to their partners through sex. This factor alone makes HIV stigma and discrimination a public health issue as it not only negatively impacts

⁷ HIV.gov. *Impact on Racial and Ethnic Minorities*. <https://www.hiv.gov/hiv-basics/overview/data-and-trends/impact-on-racial-and-ethnic-minorities>

⁸ U.S. Centers for Disease Control and Prevention. Vital Signs - HIV and Gay and Bisexual Men. <https://www.cdc.gov/vitalsigns/hivgaybimen/index.html>

⁹ U.S. Centers for Disease Control and Prevention. Issue Brief: HIV and Transgender Communities. <https://www.cdc.gov/hiv/policies/data/transgender-issue-brief.html>

¹⁰ National Institutes of Health. *Understanding Global HIV Stigma and Discrimination: Are Contextual Factors Sufficiently Studied?* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6603743/>

¹¹ HIV.gov. Viral Suppression and an Undetectable Viral Load. <https://www.hiv.gov/hiv-basics/staying-in-hiv-care/hiv-treatment/viral-suppression>

the health of people with HIV, but also the broader community. HIV impacts us all, whether we like it or not. We all, including Meta, have a role to play in reducing HIV stigma in our society.

AIDS United strongly advises Meta's Oversight Board to consider the severe consequences to human life that allowing harmful content, such as misgendering and harassment on its platforms can have on transgender individuals, particularly those living with HIV. The failure to not protect transgender people, and all LGBTQ+ individuals from such content not only further allows stigma and discrimination to continue, but also contributes to the already alarmingly high rates of suicide and violence within the HIV and LGBTQ+ communities. We believe that Meta has a profound responsibility to uphold and promote Corporate Social Responsibility by ensuring its platforms are safe and inclusive for all users, particularly those from vulnerable and marginalized communities. We urge Meta's Oversight Board to implement Comprehensive Content Moderation Policies, policies that specifically address the unique vulnerabilities of transgender individuals. This means the immediate removal of all harmful content that implies violence against transgender people, and investing in online environments where all users, including transgender individuals and those living with HIV, can partake without fear of harassment or discrimination. We encourage Meta to lead with transparency in its content moderation practices. Such an action would demonstrate that Meta is accountable to the online community and is committed to creating a safer, more inclusive platform.

AIDS United would be happy to assist Meta in crafting additional guidelines for what constitutes appropriate online behavior or criteria for establishing whether appropriate safety has been achieved, including convening stakeholders to provide additional expertise. If you would like to discuss this matter further, please reach out to Christina Adeleke at cadeleke@aidsunited.org or 202.876.2824.

We appreciate the opportunity to provide public comment.

Sincerely,

A handwritten signature in cursive script that reads "Carl Baloney Jr.".

Carl Baloney, Jr.

Vice President for Public Affairs & Chief Policy Officer

AIDS United