H. R. 5331

To prohibit discrimination on the basis of sex, sexual orientation, and gender identity; and to protect the free exercise of religion.

IN THE HOUSE OF REPRESENTATIVES

December 6, 2019

Mr. Stewart (for himself, Mr. Bishop of Utah, Mr. Curtis, Mr. Fitzpatrick, Mr. Simpson, Mr. Upton, Ms. Stefanik, Mr. Amodei, and Mr. Joyce of Ohio) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and Labor, Ways and Means, Financial Services, Oversight and Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To prohibit discrimination on the basis of sex, sexual orientation, and gender identity; and to protect the free exercise of religion.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Fairness for All Act.”
SEC. 2. PROHIBITION AGAINST DISCRIMINATION OR SEGREGATION IN PLACES OF PUBLIC ACCOMMODATION.

Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

(1) in subsection (a), by inserting “sex, sexual orientation, gender identity,” before “or national origin”;

(2) in subsection (b)—

(A) in paragraph (3), by striking “and” at the end;

(B) by redesignating paragraph (4) as paragraph (10);

(C) by inserting after paragraph (3) the following:

“(4) any place of exercise, recreation, or amusement, other than religious camps or religious retreat centers;

“(5) any provider of financial services, including banks, credit unions, mortgage houses, brokers, and financial planners;

“(6) for the purpose of classifications enumerated in subsection (a) and not described by section 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. 18116(a))—

“(A) any provider of medical services. It shall not constitute a violation of this title to provide a
service, treatment, therapy, procedure, or drug on
the same medical terms or criteria applicable to indi-
viduals needing that service, treatment, therapy, pro-
cedure or drug, without regard to protected class
status;

“(B) any provider of mental health care, except
that this section shall not apply when the primary
objective is to assist a person in entering or sus-
taining a marriage, so long as the provider coordi-
nates a referral of the client to another qualified
mental health care provider who will provide the
needed service and the client is not in imminent dan-
ger of harming self or others;

“(C) nothing in subparagraph (B) shall apply
to a priest, pastor, rabbi, imam, or minister of any
faith while acting substantially in a ministerial ca-
pacity; and

“(D) a provider of medical services covered by
subparagraph (A) or a provider of mental health
care covered by subparagraph (B) may make evi-
dence-based medical determinations and may refer
patients when necessary for a patient’s best interests
and welfare, including professional expertise;

“(7) any place of or provider of transportation serv-
ices;
“(8) any provider of funeral services or burial plots, except those that primarily limit their services or facilities to those of a particular religion;

“(9) any store, shopping center, or online retailer or provider of online services that has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. This employee threshold shall not apply to a claim of discrimination because of race, color, or national origin or to a place of public accommodation covered under paragraphs (1) through (8);”; and

(D) by inserting after paragraph (10) the following:

“(11)(A) The provisions of this title shall not apply to—

“(i) any building or collection of buildings that is used primarily as a denominational headquarters, church administrative office, or church conference center;

“(ii) a place of worship, such as a church, synagogue, mosque, chapel, and its appurtenant properties used primarily for religious purposes;

“(iii) a religious educational institution and its appurtenant properties used primarily for religious purposes;
“(iv) in connection with a religious celebration or exercise: a facility that is supervised by a priest, pastor, rabbi, imam, or minister of any faith, or religious certifying body, and that is principally engaged in providing food and beverages in compliance with religious dietary requirements; or

“(v) any online operations or activities of an organization exempt under this section.

“(B) The following shall not be a place of public accommodation, even if used for a commercial purpose, except within the area and during the time that the property or facility is open to the public; operated primarily for a commercial purpose; and not primarily related to the inculcation, promotion, or expression of religion—

“(i) other appurtenant properties or facilities owned or operated by a church, by another house of worship, or by a religious educational institution; or

“(ii) a property owned or operated primarily for noncommercial purposes by a nonprofit religious corporation that holds itself out to the public as substantially religious, has as its stated purpose in its organic documents that
it is religious, and is substantially religious in its current operations.

“(C) This paragraph (11) shall not apply to a person or entity that discriminates because of race, color, or national origin with respect to a property or facility enumerated in (A) or (B).

“(12) Provided that equivalent treatment, services, facilities, and benefits are made available and without prejudicing rights or protections based on any other protected class status—

“(A) nothing in this title that refers to ‘sex’ shall be construed to prevent a fitness center, spa, or similar place, whose services or facilities are intended for the exclusive use of persons of the same sex, from providing the use of those services or facilities exclusively to persons of that sex or prohibit a place of public accommodation from temporarily restricting access to a fitness center, spa, pool, or similar place, according to sex; and

“(B) a place of public accommodation shall reasonably accommodate a patron who requests greater privacy within a facility intended for the exclusive use of persons of the same sex.
“(13) Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this title shall be construed to permit a penalty to be imposed on any person or any individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.”; and

(3) by adding at the end of subsection (e) the following:

“(f) DEFINITIONS.—For purposes of this title:

“(1) The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, without regard to the individual’s designated sex at birth. A person’s gender identity can be shown by providing evidence, including medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person’s core identity, and not being asserted for an improper purpose.

“(2) The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.
“(3) The term ‘online retailer or provider of online services’ means a web page by a commercial business not enumerated in paragraph (11) that invites the general public to purchase a good or service by use of a credit card or similar payment device over the internet. It does not mean a web page that gives information about a good or service, including quality, price, or availability, but does not permit such purchase directly from the web page.

“(4) The terms ‘religion’ and ‘religious’ include all aspects of religious belief, observance, and practice, whether or not compelled by, or central to, a system of religion.

“(5) The term ‘religious corporation, association, educational institution, or society’ includes—

“(A) a church, synagogue, mosque, temple, or other house of worship;

“(B) a nonprofit corporation, association, educational institution, society, or other nonprofit entity that is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular church, denomination, convention, or association of churches or other houses of worship; or
“(C) a nonprofit corporation, association, educational institution, society, or other non-profit entity that holds itself out to the public as substantially religious, has as its stated purpose in its organic documents that it is religious, and is substantially religious in its current operations.

“(g) ADDITIONAL FACILITIES NOT REQUIRED.—Nothing in this title shall be construed to require the construction of new or additional facilities.”.

SEC. 3. PROHIBITION ON DISCRIMINATION IN FEDERALLY FUNDED PROGRAMS.

The Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended—

(1) in section 601, by inserting “sex, sexual orientation, gender identity,” before “or national origin.”;

(2) in section 606, by striking “For the purposes of this title” and inserting “Subject to section 607, for the purposes of this title”; and

(3) by adding at the end the following:
“SEC. 607. PROGRAM OR ACTIVITY AND PROGRAM DEFINED FOR PURPOSES OF RELIGIOUS ENTITIES AS APPLIED TO SEX, SEXUAL ORIENTATION, OR GENDER IDENTITY.

“For the purposes of this title, as applied to sex, sexual orientation, and gender identity, for any religious corporation, association, educational institution, or society, the term ‘program or activity’ and the term ‘program’ are limited to any specific program or activity, or part thereof, that receives Federal financial assistance. Any penalty or loss of Federal financial assistance assessed against such a religious entity shall be limited to the program or activity or program, or part thereof, that is determined to have violated section 601.

“SEC. 608. SAFEGUARDS FOR RELIGIOUS ORGANIZATIONS RECEIVING ASSISTANCE.

“(a) IN GENERAL.—An otherwise qualified religious provider shall be eligible to receive Federal financial assistance for a particular service without regard to the provider’s religious views or teachings, notwithstanding section 2000d. Subject to this title, a religious organization that applies for, or participates in, a program or activity receiving Federal financial assistance shall retain its independence and may continue to carry out its mission, including the definition, development, and expression of its religious beliefs.
“(b) Specific Safeguards.—Nothing in this title prohibits a religious organization receiving Federal financial assistance from using space in its buildings and other facilities to conduct its program or activities where there is religious art, icons, messages, scriptures, or other symbols. Additionally, the organization retains authority over its internal governance and thus may have religious words in the organization’s name, select members of its governing board based on religious criteria, and have religious references in its mission statement and other governing documents.

“(c) Educational and Childcare Institutions.—A religious educational institution or daycare center may enforce with reasonable consistency written religious standards in its admission criteria, educational programs, student retention policies, or residential life policy, unless those standards are based on race, color, or national origin or would exclude or remove a student solely because of a prohibited classification under section 601 with respect to that student’s parent or legal guardian.

“(d) Marriage and Family Education, Strengthening, and Counseling Programs.—For purposes of sexual orientation and gender identity, a religious corporation, association, educational institution, or society receiving Federal financial assistance shall be
deemed in compliance with section 601 notwithstanding the content of any marriage or family education, strength-
ening, or counseling programming, provided that the re-
cipient does not exclude beneficiaries on the basis of sexual orientation or gender identity.

“(1) Referral obligation.—If a beneficiary or prospective beneficiary objects to the religious character of the recipient, the recipient will under-
take reasonable efforts as described in subsection (d)(2) to identify and refer the beneficiary to an al-
ternative provider to which the beneficiary has no objection; however, the recipient is not obligated to guarantee that in every instance an alternative pro-
vider will be available.

“(2) Agency responsibilities.—Each agency responsible for administering or supporting a social service program with Federal financial assistance shall establish policies and procedures designed to ensure that—

“(A) appropriate and timely referrals are made to an alternative provider;

“(B) all referrals are made in a manner consistent with all applicable privacy laws and regulations;
“(C) the recipient subject to subsection (d)(1) notifies the agency of any referral;

“(D) such recipient has established a process for determining whether the beneficiary has contacted the alternative provider; and

“(E) each beneficiary of a marriage or family education, strengthening, or counseling program that receives Federal financial assistance receives written notice of the protections set forth in this section prior to enrolling in or receiving services from such program.

“(3) RECIPIENT’S RESPONSIBILITIES.—The referral obligation of the recipient under section (d)(2) shall be satisfied by the recipient if it—

“(A) makes appropriate and timely referrals to an alternative provider;

“(B) refers in a manner consistent with all applicable privacy laws and regulations;

“(C) notifies the agency of the referral;

“(D) has established a process for determining whether the beneficiary has contacted the alternative provider; and

“(E) can demonstrate that each beneficiary of a social service program received written notice of the protections set forth in this
section prior to enrolling in or receiving services from such program.

“SEC. 609. SPECIALIZED FEDERAL FINANCIAL ASSISTANCE TO AN ENTIRE ENTITY.

“(a) Any religious corporation, association, educational institution, or society that is otherwise eligible for Federal financial assistance that is awarded to entities to support the safety or infrastructure of the entity cannot be excluded from assistance because of its religious beliefs or practices. Such assistance includes Federal financial assistance for historic preservation, disaster recovery, or facilities security. The religious corporation, association, educational institution, or society shall be deemed in compliance with section 601, provided that funds used for procurement from a third-party vendor must be used in a manner that complies with section 601.

“(b) For the purposes of this subsection, a religious educational institution or daycare center that receives funds under the Richard B. Russell National School Lunch Act shall not be deemed a recipient of Federal financial assistance.
“SEC. 610. FEDERAL FINANCIAL ASSISTANCE FOR ADOPTION AND FOSTER CARE.

“(a) CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY.—The Congress hereby finds and declares the following:

“(1) At-risk children deserve a safe and caring family, and reducing the number of vulnerable children without a permanent home is in the Federal interest.

“(2) There is a national deficit in the number of adoptive and foster parents and the private agencies qualified to serve these children. Federal and State governments should cooperate to encourage new agencies to join the effort to serve the needs of vulnerable children, alongside private agencies that have already been doing that crucial work for decades, including agencies whose commitment to serve arises from profound religious convictions.

“(3) By providing safe and welcoming homes to vulnerable children, adoptive and foster care parents serve the best interests of children and contribute to the common good of our communities in ways that are irreplaceable. Such parents should be empowered to adopt children based on their merits as parents, without being thwarted by discriminatory obstacles.
“(4) By finding safe and welcoming homes for vulnerable children, religious and other providers of adoption and foster care services, facilitate connections between good parents and vulnerable children. In doing so, such providers also contribute to the common good of our communities in ways that are irreplaceable.

“(5) The indirect funding program created by this section is intended to be a permanent and fully funded program that links vulnerable children to good parents in order to serve the best interests of children. This indirect funding program will do so by ensuring that diverse adoption and foster care providers, including religious providers, will continue to receive Federal financial assistance.

“(6) Therefore, it is the policy of the Federal Government to protect the best interests of at-risk children by establishing minimum Federal standards that guarantee the equal treatment of qualified families seeking to offer foster care or adoption and an equal respect for the diversity of private agencies, including religious agencies, that provide adoption and foster care services. This section shall be construed in a manner consistent with these findings and declaration of policy.
“(b) NONDISCRIMINATION REQUIREMENTS.—Federal financial assistance for adoption, foster care, or related services is subject to section 601, unless otherwise provided in this section. Any entity that receives Federal financial assistance to perform adoption or foster care placements or related services, or that contracts with an entity that receives Federal financial assistance for those services, except for a private agency when participating in the indirect funding program as described under subsection (c)(2)(B) or (d)(1), may not in the course of performing an adoption, foster care, or related service discriminate against a prospective parent or a child because of race, color, national origin, sex, sexual orientation, or gender identity.

“(1) An entity unlawfully discriminates against a prospective parent by—

“(A) denying to any qualified person equal access to or equal treatment during the adoption or foster care evaluation and placement process because of the race, color, national origin, sex, sexual orientation or gender identity of the qualified prospective adoptive or foster parent or of the child involved;

“(B) delaying or denying the placement of a child for adoption or into foster care because
of the race, color, national origin, sex, sexual orientation, or gender identity of the qualified prospective adoptive or foster parent, or of the child involved;

“(C) requiring different or additional screenings, processes, or procedures for adoptive or foster care placement because of the race, color, national origin, sex, sexual orientation, or gender identity of the qualified prospective adoptive or foster parent, or of the child involved;

“(D) requiring a qualified prospective foster parent to subscribe to subparagraph (D) or (E) of section (b)(2); or

“(E) excluding a qualified prospective adoptive or foster parent because of the parent’s religion.

“(2) An entity unlawfully discriminates against a child by—

“(A) denying to any qualified person equal access to or equal treatment during the adoption or foster care evaluation and placement process because of the race, color, national origin, sex, sexual orientation, or gender identity
of the qualified prospective adoptive or foster parent, or of the child involved;

“(B) delaying or denying the placement of a child for adoption or into foster care because of the race, color, national origin, sex, sexual orientation, or gender identity of the qualified prospective adoptive or foster parent, or of the child involved;

“(C) requiring different or additional screenings, processes, or procedures for adoptive or foster care placement because of the race, color, national origin, sex, sexual orientation, or gender identity of the qualified prospective adoptive or foster parent, or of the child involved;

“(D) treating a child in the legal custody of the State inconsistently with the child’s gender identity, as demonstrated by the child’s medical history, care or treatment of the child’s gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, is part of the child’s core identity, and is not being asserted for an improper purpose; or
“(E) subjecting any child in the legal custody of the State to any practice or treatment that seeks to change the child’s sexual orientation or gender identity. It shall be lawful for a professional counselor licensed by the State to assist a minor, without regard to sexual orientation or gender identity, to prevent or address unlawful conduct or unsafe sexual practices.

“(c) INDIRECT FUNDING OF ADOPTION AND FOSTER CARE SERVICES.—

“(1) Establishment of indirect funding program.—The Department of Health and Human Services, the Social Security Administration, the Department of State, and any other agency authorized by Federal law to administer Federal financial assistance for the support of adoption and foster care services shall issue final rules within two years of the enactment of this Act to create an indirect funding program that delivers Federal financial assistance to eligible prospective parents for the purpose of obtaining such services through a qualified private agency that they select.

“(A) This indirect funding program will entitle a qualified State resident to receive a
certificate to assist with the costs of a personal assessment, background check, home study, endorsement, certification of a person’s eligibility to act as the guardian of a child in foster care or as the parent of a child available for adoption, and placement of a child with an eligible individual or family.

“(B) A substantial proportion of appropriated Federal financial assistance for adoption or foster care services, including assistance available under part B and part E of title IV of the Social Security Act, shall be allocated to fund the indirect funding program through the issuance of a certificate to eligible prospective parents.

“(C) Each certificate shall be worth an amount to be determined through agency rule-making, but in no event less than $3,000 as indexed to the Consumer Price Index as of January 1, 2019.

“(D) Participation in this indirect funding program may not be delayed or denied because of a State resident’s race, color, national origin, religion, sex, sexual orientation, or gender identity.
“(E) The responsible Federal agencies shall establish policies and procedures designed to ensure that where a referral is required by this section—

“(i) an appropriate and timely referral is made to an alternative provider;

“(ii) all referrals are made in a manner consistent with applicable privacy laws and regulations;

“(iii) the provider of adoption and foster care placement or related services notifies the agency of any referral; and

“(iv) each applicant for and recipient of adoption or foster care placement or related services from a provider that receives Federal financial assistance will receive written notice from the provider of the protections set forth in this section when applying for or receiving such services.

“(2) Implementation of indirect funding program.—

“(A) Approved state plan.—To be eligible for Federal financial assistance for adoption or foster care services under part B or part E of title IV of the Social Security Act, a State
must develop a written plan approved by the Secretary of the Department of Health and Human Services providing that—

“(i) the State has established rules, policies, and procedures within 6 months after issuance of final rules under subsection (c)(1) that ensures the State’s full participation in the indirect funding program by making available to each qualified State resident on request a certificate as prescribed by subsection (c)(1), to be used solely for the services enumerated in subsection (c)(1). This certificate may commingle funding from Federal and State sources, and such commingled revenues shall be deemed Federal financial assistance;

“(ii) the State uses its best efforts to increase the number of private organizations within each catchment area that are qualified to provide foster care and adoption services, including organizations willing to serve all qualified prospective parents;
“(iii) the State publishes and maintains a current list of licensed adoption and foster care providers with offices in the State, by catchment area, which list will identify providers that serve all applicants, as well as those that serve particular communities and those that provide particular services;

“(iv) the State performs a prompt and cost-free eligibility assessment for every prospective parent who applies for a certificate, informs every eligible prospective parent of the licensed adoption and foster care providers in the participant’s catchment area, and may provide additional information to facilitate the prospective parent’s selection of a provider;

“(v) any State resident eligible to act as a foster parent or adoptive parent has an equal opportunity to obtain adoption or foster care related services from a provider who accepts the certificate described in section (e)(1); and

“(vi) when a qualified individual seeking adoption or foster care placement or
related services is unable to obtain such
services from a particular provider—

“(I) there is at least one other
willing and qualified provider of such
service in the same or adjacent
catchment area that will serve all
qualified individuals;

“(II) the provider gives an appro-
priate and timely referral to at least
one alternative provider;

“(III) each referral is made in a
manner consistent with applicable pri-
vacy laws and regulations; and

“(IV) the provider of adoption
and foster care placement or related
services notifies the State of any re-
ferral that is issued.

“(B) PROTECTIONS FOR PRIVATE AGEN-
cies.—No State or local government may—

“(i) deny any licensed provider of
adoption or foster care placement or re-
lated services the opportunity to partici-
pate in the certificate program prescribed
by subsection (c)(1);
“(ii) deny any licensed provider of adoption or foster care placement or related services reasonable payment for services actually rendered in reliance on a certificate;

“(iii) require a provider of adoption or foster care placement or related services to perform such services in a particular instance as a condition of participating in the certificate program prescribed by subsection (c)(1), unless such service is required by Federal law or imposed pursuant to an agreement between the provider and the State that compensates the provider for such service exclusively with State revenues; and

“(iv) withhold, suspend, or terminate contracts, cooperative agreements, grants, or other financial assistance when a provider of adoption or foster care placement or related services takes any action permitted under this title.

“(3) AUTHORITY TO WITHHOLD FUNDS.—If a State fails to participate in the indirect funding program, develop an appropriate State plan, or to com-

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ply with this section in any other respect, the Sec-
retary shall, after appropriate notice and failure to
comply, withhold payment to the State of amounts
otherwise payable under part B or E of title IV of
the Social Security Act (42 U.S.C. 621 et seq., 670
et seq.), to the extent that the Secretary deems the
withholding necessary to induce compliance. A State
may elect not to comply with its duties under this
section on condition that it declines Federal financial
assistance for adoption and foster care.

“(d) Private Recipients of Federal Financial
Assistance.—

“(1) Protection for Diverse Providers.—
A private organization that is eligible to receive Fed-
eral financial assistance through the certificate pro-
gram prescribed by subsection (c)(1) for providing
any adoption or foster care placement or related
services may—

“(A) decline to accept a certificate without
being obligated to perform a particular service,
despite receiving certificates to perform other
covered adoption or foster care services, so long
as the provider gives a referral to the certificate
holder consistent with section (c)(2)(A)(vi)(II)–
(IV); or
“(B) after accepting a certificate, facilitate a mutually voluntary referral that does not unreasonably delay or disrupt the adoption or foster care evaluation and placement process.

“(2) MISREPRESENTATION.—After accepting a certificate, a provider of adoption or foster care services may terminate its relationship with a prospective parent who makes a material misrepresentation of a fact that the prospective parent knew or should have known that the agency specifically requested. Such agency shall provide a referral consistent with subsection (c)(2)(A)(vi)(II)–(IV) and shall not lose its right under subsection (c)(2)(B)(ii) to reasonable payment for services actually performed.

“(3) PROTECTION FOR CUSTODIAL PARENTS.—A private organization that has received Federal financial assistance through the certificate program prescribed by subsection (c)(1) shall not discriminate against the custodial parent of a child in foster care because of the custodial parent’s race, color, national origin, religion, sex, sexual orientation, or gender identity with respect to the monitoring of a parent whom the provider has previously endorsed or with whom the provider has placed a child.

“(e) MISCELLANEous.—
“(1) Custody of child in foster care.—
For purposes of this section, a child in foster care shall be deemed to be in the legal custody of the State.

“(2) Rule of construction.—Nothing in this section shall be construed to prohibit an entity receiving Federal financial assistance for adoption, foster care, or related services from making an individualized placement assessment in the best interest of the child’s health, safety, and welfare.

“(3) Effective dates.—

“(A) In general.—Except as described in subsection (e)(1)(B), the protections under subsection (b) shall become effective on the date of enactment.

“(B) Religious provider exemption.—

“(i) Section (b)(1) shall come into effect with respect to a religious adoption or foster care provider 12 months after the State where the provider operates has implemented the certificate program as described in section (c)(2)(A).

“(ii) If the certificate program is not substantially funded as required by subsection (e), the protections described by
subsection (b)(1) shall become unenforceable as to a religious adoption or foster care provider until funding is provided or restored.

“(iii) For purposes of this section, ‘religious adoption or foster care provider’ means a licensed or accredited nonprofit provider of adoption or foster care services that—

“(I) is in whole or substantial part, owned, supported, controlled, or managed by a particular religion or by a particular church, denomination, convention, or association of churches or other houses of worship; or

“(II) holds itself out to the public as substantially religious, has as its stated purpose in its organic documents that it is religious, and is substantially religious in its current operations.

“(4) PRIVATE RIGHTS OF ACTION.—

“(A) Nothing in this section shall be construed to authorize a right of action against a
private organization for the exercise of rights provided under subsection (d)(1).

“(B) A private right of action may be brought by a private organization under section 1107.

“(5) SUPPLANTING PROHIBITED.—Any Federal funds received under this section shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subchapter.

“(6) EFFECT ON FEDERAL LAWS RESPECTING RACIAL DISCRIMINATION.—Nothing in this section shall be construed to alter, affect, or supersede any Federal law that addresses discrimination because of race, color, or national origin by any State or private organization that receives Federal financial assistance for adoption or foster care placement or related services.

“(7) APPLICATION TO STATES WITH WAIVERS.—For any State that, on the date of enactment of this Act, has in effect a waiver approved under section 1130 of the Social Security Act (42 U.S.C. 1320a–9), the amendments to this title shall not apply to that State before the expiration of the waiver (determined without regard to any extensions), to
the extent that an amendment is inconsistent with
the terms of the waiver.

“(8) Effect on State laws.—Nothing in
this section shall be construed to supersede a State
or local law, policy, or contract addressing the legal
conditions of receiving Government funding for
adoption or foster care services, provided that the
State or local law does not directly conflict with this
section.

“SEC. 611. SEX-SPECIFIC SEGREGATION OR PROGRAMS.

“(a) If sex segregation or sex-specific programming
is necessary to the essential operation of a program or
activity, nothing in this title shall prevent any such pro-
gram or activity from considering an individual’s sex, pro-
vided that where appropriate to accomplish the purpose
of the program or activity, individuals are treated in ac-
cordance with their gender identity.

“(b) An educational institution receiving Federal fi-
nancial assistance shall reasonably accommodate a student
who requests greater privacy with respect to the use of
a facility designated for the exclusive use of persons of
the same sex, provided that the accommodation does not
exclude any student from such a facility to which the stu-
dent has a right of access or otherwise prejudice any right
or privilege protected under this title.
“(c) Nothing in this title shall be construed to alter or affect the Violence Against Women Act of 1994.

“SEC. 612. NEUTRALITY WITH RESPECT TO ABORTION.

“Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this title shall be construed to permit a penalty to be imposed on any person or any individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

“SEC. 613. NO EFFECT ON TITLE IX.

“Nothing contained in this title shall be construed to alter or affect title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.). Any claim that a person has been excluded because of sex from participation in, or denied the benefits of, or subjected to discrimination with respect to any education program or activity that receives Federal financial assistance shall be governed by title IX and not this title.

“SEC. 614. ADDITIONAL DEFINITIONS.

“For purposes of this title:

“(1) The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual,
without regard to the individual’s designated sex at birth. A person’s gender identity can be shown by providing evidence, including medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person’s core identity, and not being asserted for an improper purpose.

“(2) The terms ‘religion’ and ‘religious’ include all aspects of religious belief, observance, and practice, whether or not compelled by, or central to, a system of religion.

“(3) The term ‘religious corporation, association, educational institution, or society’ includes—

“(A) a church, synagogue, mosque, temple, or other house of worship;

“(B) a nonprofit corporation, association, educational institution, society, or other nonprofit entity that is, in whole or substantial part, owned, supported, controlled, or managed by a particular religion or by a particular church, denomination, convention, or association of churches or other houses of worship; or

“(C) a nonprofit corporation, association, educational institution, society, or other non-
profit entity that holds itself out to the public
as substantially religious, has as its stated pur-
pose in its organic documents that it is reli-
gious, and is substantially religious in its cur-
rent operations.

“(4) The term ‘religious educational institution’
includes any preschool, primary, secondary or post-
secondary educational institution that is—

“(A) in whole or in substantial part,
owned, supported, controlled, or managed by a
particular religion or by a particular church, de-
nomination, convention, or association of
churches or other houses of worship; or

“(B) a nonprofit corporation organized for
educational purposes that holds itself out to the
public as substantially religious, has as its stat-
ed purpose in its organic documents that it is
religious, and is substantially religious in its
current operations.

“(5) The term ‘sexual orientation’ means homo-
sexuality, heterosexuality, or bisexuality.”.

SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.

(a) DEFINITIONS.—Section 701 of the Civil Rights
Act of 1964 (42 U.S.C. 2000e) is amended—
(1) in subsection (j) by inserting "(1)" after "(j)";

(2) in subsection (j)(1) by inserting "after initiating and engaging in an affirmative and bona fide effort," after "unable";

(3) in subsection (j)(1) by striking "an employee’s" and all that follows through "religious" and inserting "an employee’s religious";

(4) by adding at the end of subsection (j)(1) the following:

"(2)(A) In this subsection, the term ‘employee’ includes an employee (as defined in subsection (f)), or a prospective employee, who, with or without reasonable accommodation, is qualified to perform the essential functions of the employment position that such individual holds or desires.

"(B) In this paragraph, the term ‘perform the essential functions’ includes carrying out the core requirements of an employment position and does not include carrying out practices relating to clothing, practices relating to taking time off, or other practices that may have a temporary or tangential impact on the ability to perform job functions, if any of the practices described in this subparagraph restrict the ability to wear religious clothing, to take
time off for a holy day, or to participate in a religious observance or practice.

“(3) In this subsection, the term ‘undue hardship’ means an accommodation requiring significant difficulty or expense.

“(A) For purposes of determining whether an accommodation requires significant difficulty or expense, factors to be considered in making the determination shall include—

“(i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retraining or hiring employees or transferring employees from one facility to another;

“(ii) the overall financial resources and size of the employer involved, relative to the number of its employees;

“(iii) for an employer with multiple facilities, the geographic separateness or administrative or fiscal relationship of the facilities; and

“(iv) whether the accommodation will obstruct the employer from providing its customers or clients the full and equal enjoyment of the goods, services, facilities,
privileges, advantages, and accommodations offered.

“(B) An employer shall not be required to provide an accommodation that will result in the violation of Federal or State law nor result in liability for a hostile work environment.”;

and

(5) by inserting after subsection (n) the following:

“(o)(1) The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, without regard to the individual’s designated sex at birth. A person’s gender identity can be shown by providing evidence, including medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person’s core identity, and not being asserted for an improper purpose.

“(2) The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.

“(3) The terms ‘religion’ and ‘religious’ include all aspects of religious belief, observance, and practice, whether or not compelled by, or central to, a system of religion.
“(4) The term ‘religious corporation, association, educational institution, or society’ includes—

“(A) a church, synagogue, mosque, temple, or other house of worship;

“(B) a nonprofit corporation, association, educational institution, society, or other nonprofit entity that is, in whole or substantial part, owned, supported, controlled, or managed by a particular religion or by a particular church, denomination, convention, or association of churches or other houses of worship; or

“(C) a nonprofit corporation, association, educational institution, society, or other nonprofit entity that holds itself out to the public as substantially religious, has as its stated purpose in its organic documents that it is religious, and is substantially religious in its current operations.”.

(b) EXEMPTION.—Section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1(a)) is amended—

(1) by inserting “(1)” after “(a)”;

(2) by striking “State, or” and inserting the following:

“(2)(A) This title shall not apply”; and
(3) by adding at the end of paragraph (2) the following:

“(B) EXEMPT ORGANIZATIONS.—With respect to claims of employment discrimination because of sexual orientation or gender identity, nothing in this subchapter shall apply to the following:

“(i) a church or its integrated auxiliaries, a convention or association of churches, or a religious order, as described in section 6033(a)(3)(A)(i) and section 6033(a)(3)(A)(iii) of the Internal Revenue Code of 1986;

“(ii) a religious organization described in sections 501(c)(3) and 509(a)(1), (2), or (3) that is covered by an Internal Revenue Service group exemption letter issued to a church or a convention or association of churches;

“(iii) a religious educational institution that is eligible for exemption under section 703(e)(2) of this subchapter;

“(iv) a religious corporation, association, or society under section 702(a) of this subchapter that is eligible for tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 and that employs only individuals of the employer’s religion, unless the employee
demonstrates that the employer has not applied
with reasonable consistency its religious stand-
ard cited as the reason for the adverse employ-
ment action; or

“(v) any association exclusively composed
of employers exempt under subparagraphs
(2)(B)(i)–(iv).

“(C) A claim under this subchapter
against an employer described by section
702(a)(2)(B) for discrimination because of sex
shall not include claims of discrimination be-
cause of sexual orientation or gender identity.
This provision shall not otherwise affect claims
of sex discrimination, and nothing in this provi-
sion shall prevent a person, regardless of sexual
orientation or gender identity, from bringing a
claim of sex discrimination.

“(D) No religious corporation, association,
or society otherwise eligible under section
(2)(B)(iv) of this section shall be ineligible be-
cause of nonrecognition under section 501(c)(3)
of the Internal Revenue Code, unless such tax
treatment is consistent with section
501(c)(3)(B) of that Code.
“(E) No employer whose primary purpose and activity is to deliver medical services shall be eligible for the exemptions under section 702(a)(2)(B).

“(F) Nothing in this section shall prejudice rights and defenses available under sections 702(a) and 703(e)(2).”.

(c) UNLAWFUL EMPLOYMENT PRACTICES.—Section 703 of such Act (42 U.S.C. 2000e–2) is amended—

(1) except in subsection (e), by inserting “sexual orientation, gender identity,” immediately before “or national origin” each place it appears;

(2) in subsection (e)(1), by striking “enterprise,” and inserting “enterprise, if an individual is recognized as qualified in accordance with gender identity when sex is a bona fide occupational qualification,”;

(3) in the heading of subsection (m), by striking “SEX,” and inserting “SEX, SEXUAL ORIENTATION, GENDER IDENTITY,”; and

(4) by adding at the end the following:

“(o)(1) In this section:

“(A) The term ‘employee’ has the meaning given the term in section 701(j)(2).
“(B) The term ‘leave of general usage’ means leave provided under the policy or program of an employer, under which—

“(i) an employee may take leave by adjusting or altering the work schedule or assignment of the employee according to criteria determined by the employer; and

“(ii) the employee may determine the purpose for which the leave is to be utilized.

“(2) For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee, for an accommodation to be considered to be reasonable, the accommodation shall remove the conflict between employment requirements and the religious observance or practice of the employee.

“(3) An employer shall be considered to commit such a practice by failing to provide such a reasonable accommodation for an employee if the employer refuses to permit the employee to utilize leave of general usage to remove such a conflict solely because the leave will be used to accommodate the religious observance or practice of the employee.”.
(d) **Other Unlawful Employment Practices.**—

Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3) is amended—

(1) in subsection (b) by inserting “sexual orientation, gender identity,” before “national origin” each place it appears;

(2) in subsection (b) by striking “employment.” and inserting “employment, if an individual is recognized as qualified in accordance with gender identity when sex is a bona fide occupational qualification.”;

and

(3) by inserting after subsection (b) the following:

“(c) **Prohibited Sanctions for Certain Employee Speech.**—

“(1) An employee may express the employee’s religious, political, or moral beliefs in the workplace in a reasonable, nondisruptive, and nonharassing way on equal terms with similar types of expression of beliefs allowed by the employer in the workplace, unless the expression is in direct and substantial conflict with the essential business-related interests of the employer.

“(2) An employer may not discharge, demote, terminate, or refuse to hire any person, or retaliate
against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified for employment, for lawful expression or expressive activity outside of the workplace regarding the person’s beliefs that—

“(A) marriage is or should be recognized as a union of one man and one woman, or one woman and one woman, or one man and one man; or

“(B) sexual activity should or should not be reserved for spouses within a marriage.

The employee’s expression is not protected under subsection (c)(2) if it directly and materially impedes the employee’s performance of an essential job function.

“(3) Paragraphs (1) and (2) shall not apply to a nonprofit organization that operates to express or advocate particular viewpoints, or to an employer that is a religious corporation, association, educational institution, or society covered by section 701(o)(4).”.

(e) CLAIMS.—Section 706(g)(2)(A) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(g)(2)(A)) is
amended by striking "sex," and inserting "sex, sexual ori-
entation, gender identity, ".

(f) EMPLOYMENT BY FEDERAL GOVERNMENT.—Sec-
tion 717 of the Civil Rights Act of 1964 (42 U.S.C.
2000e–16) is amended—

(1) in subsection (a), by striking "sex," and in-
serting "sex, sexual orientation, gender identity, ";
and

(2) in subsection (c), by striking "sex" and in-
serting "sex, sexual orientation, gender identity, ".

(g) GOVERNMENT EMPLOYEE RIGHTS ACT OF
(title III of Public Law 102–166; 42 U.S.C. 2000e–16 et
seq.) is amended—

(1) in section 301(b), by striking "sex," and in-
serting "sex, sexual orientation, gender identity, ";
and

(2) in section 302(a)(1), by striking "sex," and
inserting "sex, sexual orientation, gender identity, ".

(h) ADDITIONAL FACILITIES NOT REQUIRED.—The
Civil Rights Act of 1964 (42 U.S.C. 2000e–18) is amend-
ed by adding at the end the following:

"SEC. 719. ‘Nothing in this subchapter shall be con-
strued to require the construction of new or additional fa-
cilities.’ ".

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(i) Privacy in Sex-Designated Facilities.—The Civil Rights Act of 1964 (42 U.S.C. 2000e–19), as amended by subsection (h), is amended by adding at the end the following:

“Sec. 720. If equivalent facilities and benefits are made available and without regard to a prohibited classification under this subchapter, an employer shall reasonably accommodate an employee who requests greater privacy within a facility intended for the exclusive use of persons of the same sex.”.

(j) Intervention.—Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h–2) is amended by inserting “sexual orientation, gender identity,” before “or national origin,”.


(l) Title 5, United States Code.—Chapter 23 of title 5, United States Code, is amended—

(1) in section 2301(b)(2), by striking “sex,” and inserting “sex, sexual orientation, gender identity,”; and

(2) in section 2302—
(A) in subsection (b)(1)(A), by inserting
“sexual orientation, gender identity,” before “or
national origin,”; and
(B) in subsection (d)(1), by inserting “sex-
ual orientation, gender identity,” before “or na-
tional origin;”.

SEC. 5. HOUSING DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—

(1) Section 804 of the Fair Housing Act (42
U.S.C. 3604) is amended by inserting “sexual ori-
entation, gender identity,” after “sex” each place
that term appears.

(2) Section 805 of the Fair Housing Act (42
U.S.C. 3605) is amended by inserting “sexual ori-
entation, gender identity,” after “sex” each place
that term appears.

(3) Section 806 of the Fair Housing Act (42
U.S.C. 3606) is amended by inserting “sexual ori-
entation, gender identity,” after “sex” each place
that term appears.

(4) Section 807 of the Fair Housing Act (42
U.S.C. 3607) is amended by inserting “or to persons
who adhere to its religious beliefs, observances, te-
nets, or practices” immediately after the phrase “of
the same religion” and “or adherence to such be-
liefs, observances, tenets, or practices” immediately
before “is restricted.”

(5) Section 808 of the Fair Housing Act (42
U.S.C. 3608) is amended by inserting “sexual ori-
entation, gender identity,” after “sex” each place
that term appears.

(b) PREVENTION OF INTIMIDATION.—Section 901 of
the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended
by inserting “sexual orientation, gender identity,” after
“sex,” each place that term appears.

(c) DEFINITIONS.—Section 802 of the Fair Housing
Act (42 U.S.C. 3602) is amended by adding at the end
the following:

“(p) ‘Sexual orientation’ means homosexuality, het-
erosexuality, or bisexuality.

“(q) ‘Gender identity’ means the gender-related iden-
tity, appearance, mannerisms, or other gender-related
characteristics of an individual, without regard to the indi-
vidual’s designated sex at birth. A person’s gender identity
can be shown by providing evidence, including medical his-
tory, care or treatment of the gender identity, consistent
and uniform assertion of the gender identity, or other evi-
dence that the gender identity is sincerely held, part of
a person’s core identity, and not being asserted for an im-
proper purpose.
“(r) ‘Operates’ includes the rental or occupancy of dwellings through a lease or contract with the dwelling’s actual owner or primary operator.

“(s) ‘Religion’ has the same meaning as section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

“(t) ‘Religious organization, association, or society’ has the same meaning as section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).”.

SEC. 6. OTHER NONDISCRIMINATION REQUIREMENTS.

(a) MARRIAGE RECOGNITION.—

(1) Section 7 of title 1, United States Code, is amended to read as follows:

“§ 7. Marriage

“(a) For the purposes of any Federal law in which marital status is a factor, an individual shall be considered married if that individual’s marriage is valid in the State where the marriage was entered into or, in the case of a marriage entered into outside any State, if the marriage is valid in the place where entered into and the marriage could have been entered into in a State.

“(b) In this section, the term ‘State’ means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.”.
(2) Section 1738C of title 28, United States Code, is repealed, and the table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by striking the item relating to that section.

(b) DESSEGREGATION OF PUBLIC FACILITIES.—Section 301(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000b(a)) is amended by inserting “sex, sexual orientation, gender identity,” before “or national origin”.

(c) DISCRIMINATION IN FEDERAL JURY SERVICE PROHIBITED.—Chapter 121 of title 28, United States Code, is amended—

(1) in section 1862, by inserting “sexual orientation, gender identity,” after “sex,” each place that term appears;

(2) in section 1867, by inserting “sexual orientation, gender identity,” after “sex,” each place that term appears; and

(3) in section 1869 by adding at the end the following:

“(l) The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.

“(m) The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, without regard to
the individual’s designated sex at birth. A person’s gender identity can be shown by providing evidence, including medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person’s core identity, and not being asserted for an improper purpose.”.

(d) DISCRIMINATION IN CREDIT PROHIBITED.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) in section 701(a)(1) by striking “or” after “sex” and inserting “, sexual orientation, gender identity,” after “sex”;

(2) in section 702—

(A) by redesignating subsections (f) and (g) as subsections (g) and (i), respectively;

(B) by inserting after subsection (e) the following:

“(f) The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, without regard to the individual’s designated sex at birth. A person’s gender identity can be shown by providing evidence, including medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity,
or other evidence that the gender identity is sincerely held, part of a person’s core identity, and not being asserted for an improper purpose’’; and

(C) by inserting after subsection (g), as so redesignated, the following:

‘‘(h) The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.’’; and

(3) in section 705, by inserting ‘‘, sexual orientation, gender identity,’’ after ‘‘sex’’.

(e) DISCRIMINATION IN REFUGEE RESETTLEMENT PROHIBITED.—Section 412(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1522(a)(5)) is amended by inserting ‘‘sexual orientation, gender identity,’’ after ‘‘sex,’’.

(f) SAFE SCHOOLS.—Title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7101 et seq.) is amended by adding at the end the following:

‘‘PART G—SAFE SCHOOLS IMPROVEMENT

SEC. 4701. PURPOSE.

‘‘The purpose of this part is to address the problem of bullying and harassment conduct of students in public elementary schools and secondary schools.

SEC. 4702. ANTI-BULLYING POLICIES.

(a) BULLYING.—In this part, the term ‘bullying’ in- cludes cyber-bullying through electronic communications that take place away from school or a school-sponsored
or school-related event, but only if the cyber-bullying infringes on the rights of the student at school as set forth in subparagraph (A) or (B) of subsection (b)(1).

“(b) POLICIES.—A State that receives a grant under this title shall require all local educational agencies in the State with authority to administer public elementary and secondary schools to carry out the following:

“(1) Establish policies that prevent and prohibit conduct, including bullying and harassment—

“(A) that is sufficiently severe, persistent, or pervasive that a reasonable person would expect such bullying or harassment to limit a student’s ability to participate in, or benefit from, a program or activity of a public school or local educational agency; or

“(B) that is sufficiently severe, persistent, or pervasive that a reasonable person would expect such bullying or harassment to create a hostile or abusive educational environment, adversely affecting a student’s education, at a program or activity of a public school or local educational agency, including acts of verbal, nonverbal, or physical aggression or intimidation.
“(2) The policies required under paragraph (1) shall include a prohibition of bullying or harassment conduct based on—

“(A) a student’s actual or perceived race, color, national origin, religion, disability, sex, sexual orientation, or gender identity;

“(B) the actual or perceived race, color, national origin, religion, disability, sex, sexual orientation, or gender identity of a person with whom a student associates or has associated; or

“(C) any other distinguishing characteristics that may be defined by the State or local educational agency, including being homeless or the child or ward of a member of the Armed Forces.

“(3) Provide—

“(A) annual notice to students, parents, and educational professionals describing the full range of the local educational agency’s policies required under paragraph (1) and shall include an affirmative statement of the protections for free speech, assembly, and expression under the First Amendment and any other applicable law; and
“(B) grievance procedures for students or parents to register complaints regarding the prohibited conduct contained in such local educational agency’s discipline policies, including—

“(i) the name of the local educational agency officials who are designated as responsible for receiving such complaints; and

“(ii) timelines that the local educational agency will establish in the resolution of such complaints.

“(4) Collect annual incidence and frequency of incidents data about the conduct prohibited by the policies described in paragraph (1) at the school building level that are accurate and complete and publicly report such data at the school level and local educational agency level. The local educational agency shall ensure that victims or persons responsible for such conduct are not identifiable.

“(5) Encourage positive and preventative approaches to school discipline that minimize students’ removal from instruction and ensure that students, including students described in paragraph (2), are not subject to disproportionate punishment.
“SEC. 4703. STATE REPORTS.

“The chief executive officer of a State that receives a grant under this title, in cooperation with the State educational agency, shall submit a biennial report to the Secretary—

“(1) on the information reported by local educational agencies in the State pursuant to section 4702(b)(4); and

“(2) describing the State’s plans for supporting local educational agency efforts to address the conduct prohibited by the policies described in section 4702(b)(1).

“SEC. 4704. EVALUATION.

“(a) BIENNIAL EVALUATION.—The Secretary shall conduct an independent biennial evaluation of programs and policies to combat bullying and harassment in elementary schools and secondary schools, including implementation of the requirements described in section 4702, including whether such requirements have appreciably reduced the level of the prohibited conduct and have conducted effective parent involvement and programs that train covered school employees how to identify and stop bullying and harassment, as those terms are defined in section 4702.

“(b) DATA COLLECTION.—The Commissioner for Education Statistics shall collect data from States, that
are subject to independent review, to determine the incidence and frequency of conduct prohibited by the policies described in section 4702.

“(c) Biennial Report.—Not later than January 1 of the first calendar year that begins after the effective date of this section and every 2 years thereafter, the Secretary shall submit to the President and Congress a report on the findings of the evaluation conducted under subsection (a) together with the data collected under subsection (b) and data submitted by the States under section 4703.

“SEC. 4705. EFFECT ON OTHER LAWS.

“(a) Federal and State Nondiscrimination Laws.—Nothing in this part shall be construed to invalidate or limit rights, remedies, procedures, or legal standards available to victims of discrimination under any other Federal law or law of a State or political subdivision of a State, including title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 or 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794, 794a), or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The obligations imposed by this part are in addition to those imposed by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title

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“(b) Free Speech and Expression.—Nothing in this part shall be construed to deny any student a right of free speech, assembly, or expression protected under the Constitution or any other Federal law, or to permit unlawful viewpoint discrimination. No policy established under this part may prevent or punish a student’s expression of religious, political, or philosophical beliefs in the classroom or at school activities when such expression takes place on equal terms with similar expressions of belief allowed by the school in the same setting.

“SEC. 4706. RULE OF CONSTRUCTION.

“Nothing in this part shall be construed to prohibit a State or local entity from enacting any law with respect to the prevention of bullying or harassment of students that is not inconsistent with this part.”.

SEC. 7. PROHIBITION ON RETALIATION AND UNEQUAL TREATMENT.

Title XI of the Civil Rights Act of 1964 (42 U.S.C. 2000h et seq.) is amended by adding at the end the following:
SEC. 1107. NONRETALIATION.

(a) In General.—

(1) No government shall take any adverse action because of—

(A) the existence or invocation of any exemption, defense, or remedy under this Act; or

(B) the existence or invocation of any protection from discrimination under this Act.

(2) Nothing in this subsection shall be construed to invalidate or supersede a law without evidence that it was enacted, enforced, or administered for reasons prohibited by paragraph (1).

(b) Prohibition on Certain Government Actions.—

(1) Persons protected from discrimination.—No government shall take any adverse action that, as applied, conflicts with any protection from discrimination under this Act.

(2) Certain religious properties and religious employers.—

(A) No government shall take any adverse action that, as applied, is inconsistent with the exemptions under section 201(b)(11).

(B) No government shall take any adverse action that, as applied, abridges the exemptions provided under section 702(a)(2)(B).
“(C) Nothing in this subsection shall be construed to invalidate any other law that otherwise applies to a religious property exempt under section 201(b)(11) or a religious employer exempt under section 702(a)(2)(B).

“(3) Adoption and Foster Care Funding, Licensure, and Certification.—No State shall enforce a law with respect to a particular contract, cooperative agreement, grant, guarantee, or benefit if that law, as applied, abridges any right or benefit under section 610, unless the State demonstrates that the contract, cooperative agreement, grant, guarantee, or benefit is solely funded by revenues of a State or political subdivision thereof. A State or its political subdivision may commingle its revenues with Federal financial assistance for the purpose of providing financial aid to adoption agencies; such commingled revenues shall be deemed Federal financial assistance. No government may deny, withhold, or suspend the license or certification of a religiously affiliated adoption or foster care agency because of its religious teachings or practices, provided that the agency complies with generally applicable health and safety standards.

“(c) Religious Educational Institutions.—
“(1) NO ADVERSE ACTION FOR RELIGIOUS MISSION.—No government shall take any adverse action against a religious educational institution, its faculty, students, or graduates because of its religious mission.

“(2) ACCREDITATION.—No accrediting agency shall take an adverse action against a religious educational institution for noncompliance with an accreditation standard that would require the institution to act inconsistently with its religious mission as related to marriage, family, sexuality, or gender identity, except as these matters pertain to race, color, or national origin. Nothing in this provision shall be interpreted to deny an accrediting agency the authority under section 496(a) of the Higher Education Act (20 U.S.C. 1099b(a)) to take action necessary to ensure that the courses or programs of instruction, training, or study offered by an institution of higher education are of sufficient quality to achieve the stated objective for which the courses or the programs are offered. An accrediting agency does not demonstrate that its adverse action against a religious educational institution is authorized under section 1099b(a) merely by showing that the action results from a rule of general applicability.
“(3) Remedies.—A religious educational institution harmed by a violation of this subsection may obtain injunctive relief against the responsible accrediting agency. Upon receiving a copy of such an injunction, the Department of Education shall deem the affected religious educational institution as accredited for all purposes under Federal law. The Department shall deny recognition for any purpose to an accrediting agency that knowingly violates this subsection. An accrediting agency that loses its government recognition may apply with the Department to restore its recognition if the agency demonstrates that the violation resulted from mistake or inadvertence. Within two years of the enactment of this Act, the Department shall issue final rules prescribing the procedures governing this section.

“(d) No Religious Tests.—No government shall—

“(1) exclude a person from an occupation by depriving a person of professional credentials or imposing a fine or penalty, including through a private right of action, because of the person’s religious beliefs or affiliations, provided that the person otherwise complies with occupational or professional standards that, in purpose and effect, are neutral toward religion and generally applicable; or
“(2) determine eligibility for public office because of religious beliefs or affiliations.

“(e) Scope of Application.—Subsections (a) through (d) apply in any case in which—

“(1) section 5 of the Fourteenth Amendment to the Constitution of the United States grants lawmaking power to Congress;

“(2) action by a government or an accrediting agency would affect commerce with foreign nations, among the several States, or with Indian Tribes;

“(3) a State or political subdivision receives Federal financial assistance, to the full extent permitted by Congress’ authority under the Spending Power in article I, section 8 of the Constitution;

“(4) Congress has power under the Necessary and Proper Clause of article I, section 8 to effectuate the exercise of its enumerated powers; or

“(5) the Constitution grants Congress any other lawmaking power.

“(f) Judicial Relief.—

“(1) Cause of action.—A person or organization may assert an actual violation of this section, or a credible threat of such a violation, as a claim or defense in a judicial, administrative, or arbitration proceeding and obtain appropriate relief against
a government or accrediting agency, including attorneys’ fees. A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from a claim under this section.

“(2) REMOVAL.—Any proceeding brought in a State court for which a claimant invokes this section as a claim, counterclaim, or defense may be removed by the claimant to the district court of the United States for the district and division embracing the place where such action is pending.

“(g) DEFINITIONS.—In section 1107:

“(1) The term ‘abridges’ means to diminish, burden, hinder, or obstruct.

“(2) The term ‘accreditation’ means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency’s standards and requirements.

“(3) The term ‘accrediting agency’ means a legal entity, or part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

“(4) The term ‘adverse action’ includes action that suspends, revokes, or withholds licenses, per-
mits, certifications, professional credentials, guarantees, contracts, or cooperative agreements; denies or revokes scholarships, grants, loans, a tax exemption or tax-exempt status; denies access to government-sponsored facilities, activities, or programs; or that imposes any other penalty or denies an otherwise available benefit. Except for a violation of subsection (a)(1) of this section, adverse action does not include a State’s refusal to subsidize contracts, grants, loans, or cooperative agreements with exclusively State revenues because of noncompliance with State standards that, in purpose and effect, are neutral toward religion and generally applicable. Commingled State and Federal revenues shall be deemed Federal revenues. Adverse action does include suspending, revoking, or withholding scholarships, grants, and loans, or access to government-sponsored facilities, activities, or programs to qualified students or graduates of religious educational institutions, notwithstanding that the scholarships, grants, loans, facilities, activities, or programs are funded with State revenues.

“(5) The term ‘government’ means—
“(A) a State, county, municipality, or other government entity created under the authority of a State;

“(B) any branch, department, agency, instrumentality, or official of an entity listed in subsection (g)(5)(A);

“(C) any other person acting under color of State law; and

“(D) the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

“(6) The terms ‘religion’ and ‘religious’ include all aspects of religious belief, observance, and practice, whether or not compelled by, or central to, a system of religion.

“(7) The term ‘religious corporation, association, educational institution, or society’ include—

“(A) a church, synagogue, mosque, temple, or other house of worship;

“(B) a nonprofit corporation, association, educational institution, society, or other nonprofit entity that is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular
church, denomination, convention, or association of churches or other houses of worship; or

“(C) a nonprofit corporation, association, educational institution, society, or other nonprofit entity that holds itself out to the public as substantially religious, has as its stated purpose in its organic documents that it is religious, and is substantially religious in its current operations.

“(8) The term ‘religious educational institution’ means any organization covered by section 703(e)(2).

“(9) The term ‘religious mission’ includes religious affiliation, religious tenets, religious teachings, and religious standards, including policies or decisions related to such affiliation, tenets, teachings, or standards with respect to housing, employment, curriculum, self-governance, or student admission, continuing enrollment, or graduation.

“(h) CONSTRUCTION.—This section shall supersede State or local law as provided for expressly herein. Nothing contained in section 1107 shall be construed as indicating an intent on the part of Congress to occupy the field in which this Act operates to the exclusion of State or local laws on the same subject matter.”.
SEC. 8. PRESERVATION OF TAX-EXEMPT STATUS.

Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 1 et seq.) is amended—

(1) by inserting “(A)” before “Corporations, and community chest . . .”; and

(2) by adding at the end the following:

“(B)(i) For purposes of Federal law, any determination whether an organization is organized or operated exclusively for religious, charitable, scientific, literary, or educational purposes or complies with legal standards of charity shall be made without regard to the organization’s religious beliefs or practices concerning marriage, family, or sexuality, except insofar as such practices pertain to race or criminal sexual offenses punishable under constitutionally valid Federal or State law.

“(ii) As used in subsection (B)(i), the term ‘religious’ includes all aspects of religious belief, observance, and practice, whether or not compelled by, or central to, a system of religion.”.

SEC. 9. SEVERABILITY.

If any provision of this Act, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this Act and the application of
1 its other provisions to any other individuals or cir-
2 cumstances shall not be affected thereby.