

116TH CONGRESS
1ST SESSION

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. AMODEL, 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 Representa-*
2 *tives 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”.

1 **SEC. 2. PROHIBITION AGAINST DISCRIMINATION OR SEG-**
2 **REGATION IN PLACES OF PUBLIC ACCOMMO-**
3 **DATION.**

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

6 (1) in subsection (a), by inserting “sex, sexual
7 orientation, gender identity,” before “or national ori-
8 gin”;

9 (2) in subsection (b)—

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

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

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

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

18 “(5) any provider of financial services, including
19 banks, credit unions, mortgage houses, brokers, and finan-
20 cial planners;

21 “(6) for the purpose of classifications enumerated in
22 subsection (a) and not described by section 1557 of the
23 Patient Protection and Affordable Care Act (42 U.S.C.
24 18116(a))—

25 “(A) any provider of medical services. It shall
26 not constitute a violation of this title to provide a

1 service, treatment, therapy, procedure, or drug on
2 the same medical terms or criteria applicable to indi-
3 viduals needing that service, treatment, therapy, pro-
4 cedure or drug, without regard to protected class
5 status;

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

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

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

24 “(7) any place of or provider of transportation serv-
25 ices;

1 “(8) any provider of funeral services or burial plots,
2 except those that primarily limit their services or facilities
3 to those of a particular religion;

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

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

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

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

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

23 “(iii) a religious educational institution
24 and its appurtenant properties used primarily
25 for religious purposes;

1 “(iv) in connection with a religious celebra-
2 tion or exercise: a facility that is supervised by
3 a priest, pastor, rabbi, imam, or minister of any
4 faith, or religious certifying body, and that is
5 principally engaged in providing food and bev-
6 erages in compliance with religious dietary re-
7 quirements; or

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

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

17 “(i) other appurtenant properties or facili-
18 ties owned or operated by a church, by another
19 house of worship, or by a religious educational
20 institution; or

21 “(ii) a property owned or operated pri-
22 marily for noncommercial purposes by a non-
23 profit religious corporation that holds itself out
24 to the public as substantially religious, has as
25 its stated purpose in its organic documents that

1 it is religious, and is substantially religious in
2 its current operations.

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

7 “(12) Provided that equivalent treatment, serv-
8 ices, facilities, and benefits are made available and
9 without prejudicing rights or protections based on
10 any other protected class status—

11 “(A) nothing in this title that refers to
12 ‘sex’ shall be construed to prevent a fitness cen-
13 ter, spa, or similar place, whose services or fa-
14 cilities are intended for the exclusive use of per-
15 sons of the same sex, from providing the use of
16 those services or facilities exclusively to persons
17 of that sex or prohibit a place of public accom-
18 modation from temporarily restricting access to
19 a fitness center, spa, pool, or similar place, ac-
20 cording to sex; and

21 “(B) a place of public accommodation shall
22 reasonably accommodate a patron who requests
23 greater privacy within a facility intended for the
24 exclusive use of persons of the same sex.

1 “(13) Nothing in this title shall be construed to
2 require or prohibit any person, or public or private
3 entity, to provide or pay for any benefit or service,
4 including the use of facilities, related to an abortion.
5 Nothing in this title shall be construed to permit a
6 penalty to be imposed on any person or any indi-
7 vidual because such person or individual is seeking
8 or has received any benefit or service related to a
9 legal abortion.”; and

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

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

13 “(1) The term ‘gender identity’ means the gen-
14 der-related identity, appearance, mannerisms, or
15 other gender-related characteristics of an individual,
16 without regard to the individual’s designated sex at
17 birth. A person’s gender identity can be shown by
18 providing evidence, including medical history, care or
19 treatment of the gender identity, consistent and uni-
20 form assertion of the gender identity, or other evi-
21 dence that the gender identity is sincerely held, part
22 of a person’s core identity, and not being asserted
23 for an improper purpose.

24 “(2) The term ‘sexual orientation’ means homo-
25 sexuality, heterosexuality, or bisexuality.

1 “(3) The term ‘online retailer or provider of on-
2 line services’ means a web page by a commercial
3 business not enumerated in paragraph (11) that in-
4 vites the general public to purchase a good or service
5 by use of a credit card or similar payment device
6 over the internet. It does not mean a web page that
7 gives information about a good or service, including
8 quality, price, or availability, but does not permit
9 such purchase directly from the web page.

10 “(4) The terms ‘religion’ and ‘religious’ include
11 all aspects of religious belief, observance, and prac-
12 tice, whether or not compelled by, or central to, a
13 system of religion.

14 “(5) The term ‘religious corporation, associa-
15 tion, educational institution, or society’ includes—

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

18 “(B) a nonprofit corporation, association,
19 educational institution, society, or other non-
20 profit entity that is, in whole or in substantial
21 part, owned, supported, controlled, or managed
22 by a particular religion or by a particular
23 church, denomination, convention, or associa-
24 tion of churches or other houses of worship; or

1 **“SEC. 607. PROGRAM OR ACTIVITY AND PROGRAM DEFINED**
2 **FOR PURPOSES OF RELIGIOUS ENTITIES AS**
3 **APPLIED TO SEX, SEXUAL ORIENTATION, OR**
4 **GENDER IDENTITY.**

5 “For the purposes of this title, as applied to sex, sex-
6 ual orientation, and gender identity, for any religious cor-
7 poration, association, educational institution, or society,
8 the term ‘program or activity’ and the term ‘program’ are
9 limited to any specific program or activity, or part thereof,
10 that receives Federal financial assistance. Any penalty or
11 loss of Federal financial assistance assessed against such
12 a religious entity shall be limited to the program or activ-
13 ity or program, or part thereof, that is determined to have
14 violated section 601.

15 **“SEC. 608. SAFEGUARDS FOR RELIGIOUS ORGANIZATIONS**
16 **RECEIVING ASSISTANCE.**

17 “(a) IN GENERAL.—An otherwise qualified religious
18 provider shall be eligible to receive Federal financial as-
19 sistance for a particular service without regard to the pro-
20 vider’s religious views or teachings, notwithstanding sec-
21 tion 2000d. Subject to this title, a religious organization
22 that applies for, or participates in, a program or activity
23 receiving Federal financial assistance shall retain its inde-
24 pendence and may continue to carry out its mission, in-
25 cluding the definition, development, and expression of its
26 religious beliefs.

1 “(b) SPECIFIC SAFEGUARDS.—Nothing in this title
2 prohibits a religious organization receiving Federal finan-
3 cial assistance from using space in its buildings and other
4 facilities to conduct its program or activities where there
5 is religious art, icons, messages, scriptures, or other sym-
6 bols. Additionally, the organization retains authority over
7 its internal governance and thus may have religious words
8 in the organization’s name, select members of its gov-
9 erning board based on religious criteria, and have religious
10 references in its mission statement and other governing
11 documents.

12 “(c) EDUCATIONAL AND CHILDCARE INSTITU-
13 TIONS.—A religious educational institution or daycare
14 center may enforce with reasonable consistency written re-
15 ligious standards in its admission criteria, educational pro-
16 grams, student retention policies, or residential life policy,
17 unless those standards are based on race, color, or na-
18 tional origin or would exclude or remove a student solely
19 because of a prohibited classification under section 601
20 with respect to that student’s parent or legal guardian.

21 “(d) MARRIAGE AND FAMILY EDUCATION,
22 STRENGTHENING, AND COUNSELING PROGRAMS.—For
23 purposes of sexual orientation and gender identity, a reli-
24 gious corporation, association, educational institution, or
25 society receiving Federal financial assistance shall be

1 deemed in compliance with section 601 notwithstanding
2 the content of any marriage or family education, strength-
3 ening, or counseling programming, provided that the re-
4 cipient does not exclude beneficiaries on the basis of sexual
5 orientation or gender identity.

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

15 “(2) AGENCY RESPONSIBILITIES.—Each agency
16 responsible for administering or supporting a social
17 service program with Federal financial assistance
18 shall establish policies and procedures designed to
19 ensure that—

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

22 “(B) all referrals are made in a manner
23 consistent with all applicable privacy laws and
24 regulations;

1 “(C) the recipient subject to subsection
2 (d)(1) notifies the agency of any referral;

3 “(D) such recipient has established a proc-
4 ess for determining whether the beneficiary has
5 contacted the alternative provider; and

6 “(E) each beneficiary of a marriage or
7 family education, strengthening, or counseling
8 program that receives Federal financial assist-
9 ance receives written notice of the protections
10 set forth in this section prior to enrolling in or
11 receiving services from such program.

12 “(3) RECIPIENT’S RESPONSIBILITIES.—The re-
13 ferral obligation of the recipient under section (d)(2)
14 shall be satisfied by the recipient if it—

15 “(A) makes appropriate and timely refer-
16 rals to an alternative provider;

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

19 “(C) notifies the agency of the referral;

20 “(D) has established a process for deter-
21 mining whether the beneficiary has contacted
22 the alternative provider; and

23 “(E) can demonstrate that each bene-
24 ficiary of a social service program received writ-
25 ten notice of the protections set forth in this

1 section prior to enrolling in or receiving services
2 from such program.

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

5 “(a) Any religious corporation, association, edu-
6 cational institution, or society that is otherwise eligible for
7 Federal financial assistance that is awarded to entities to
8 support the safety or infrastructure of the entity cannot
9 be excluded from assistance because of its religious beliefs
10 or practices. Such assistance includes Federal financial as-
11 sistance for historic preservation, disaster recovery, or fa-
12 cilities security. The religious corporation, association,
13 educational institution, or society shall be deemed in com-
14 pliance with section 601, provided that funds used for pro-
15 curement from a third-party vendor must be used in a
16 manner that complies with section 601.

17 “(b) For the purposes of this subsection, a religious
18 educational institution or daycare center that receives
19 funds under the Richard B. Russell National School
20 Lunch Act shall not be deemed a recipient of Federal fi-
21 nancial assistance.

1 **“SEC. 610. FEDERAL FINANCIAL ASSISTANCE FOR ADOPT-**
2 **ION AND FOSTER CARE.**

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

6 “(1) At-risk children deserve a safe and caring
7 family, and reducing the number of vulnerable chil-
8 dren without a permanent home is in the Federal in-
9 terest.

10 “(2) There is a national deficit in the number
11 of adoptive and foster parents and the private agen-
12 cies qualified to serve these children. Federal and
13 State governments should cooperate to encourage
14 new agencies to join the effort to serve the needs of
15 vulnerable children, alongside private agencies that
16 have already been doing that crucial work for dec-
17 ades, including agencies whose commitment to serve
18 arises from profound religious convictions.

19 “(3) By providing safe and welcoming homes to
20 vulnerable children, adoptive and foster care parents
21 serve the best interests of children and contribute to
22 the common good of our communities in ways that
23 are irreplaceable. Such parents should be empowered
24 to adopt children based on their merits as parents,
25 without being thwarted by discriminatory obstacles.

1 “(4) By finding safe and welcoming homes for
2 vulnerable children, religious and other providers of
3 adoption and foster care services, facilitate connec-
4 tions between good parents and vulnerable children.
5 In doing so, such providers also contribute to the
6 common good of our communities in ways that are
7 irreplaceable.

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

16 “(6) Therefore, it is the policy of the Federal
17 Government to protect the best interests of at-risk
18 children by establishing minimum Federal standards
19 that guarantee the equal treatment of qualified fam-
20 ilies seeking to offer foster care or adoption and an
21 equal respect for the diversity of private agencies,
22 including religious agencies, that provide adoption
23 and foster care services. This section shall be con-
24 strued in a manner consistent with these findings
25 and declaration of policy.

1 “(b) NONDISCRIMINATION REQUIREMENTS.—Fed-
2 eral financial assistance for adoption, foster care, or re-
3 lated services is subject to section 601, unless otherwise
4 provided in this section. Any entity that receives Federal
5 financial assistance to perform adoption or foster care
6 placements or related services, or that contracts with an
7 entity that receives Federal financial assistance for those
8 services, except for a private agency when participating
9 in the indirect funding program as described under sub-
10 section (c)(2)(B) or (d)(1), may not in the course of per-
11 forming an adoption, foster care, or related service dis-
12 criminate against a prospective parent or a child because
13 of race, color, national origin, sex, sexual orientation, or
14 gender identity.

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

17 “(A) denying to any qualified person equal
18 access to or equal treatment during the adop-
19 tion or foster care evaluation and placement
20 process because of the race, color, national ori-
21 gin, sex, sexual orientation or gender identity of
22 the qualified prospective adoptive or foster par-
23 ent or of the child involved;

24 “(B) delaying or denying the placement of
25 a child for adoption or into foster care because

1 of the race, color, national origin, sex, sexual
2 orientation, or gender identity of the qualified
3 prospective adoptive or foster parent, or of the
4 child involved;

5 “(C) requiring different or additional
6 screenings, processes, or procedures for adop-
7 tive or foster care placement because of the
8 race, color, national origin, sex, sexual orienta-
9 tion, or gender identity of the qualified prospec-
10 tive adoptive or foster parent, or of the child in-
11 volved;

12 “(D) requiring a qualified prospective fos-
13 ter parent to subscribe to subparagraph (D) or
14 (E) of section (b)(2); or

15 “(E) excluding a qualified prospective
16 adoptive or foster parent because of the par-
17 ent’s religion.

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

20 “(A) denying to any qualified person equal
21 access to or equal treatment during the adop-
22 tion or foster care evaluation and placement
23 process because of the race, color, national ori-
24 gin, sex, sexual orientation, or gender identity

1 of the qualified prospective adoptive or foster
2 parent, or of the child involved;

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

9 “(C) requiring different or additional
10 screenings, processes, or procedures for adop-
11 tive or foster care placement because of the
12 race, color, national origin, sex, sexual orienta-
13 tion, or gender identity of the qualified prospec-
14 tive adoptive or foster parent, or of the child in-
15 volved;

16 “(D) treating a child in the legal custody
17 of the State inconsistently with the child’s gen-
18 der identity, as demonstrated by the child’s
19 medical history, care or treatment of the child’s
20 gender identity, consistent and uniform asser-
21 tion of the gender identity, or other evidence
22 that the gender identity is sincerely held, is
23 part of the child’s core identity, and is not
24 being asserted for an improper purpose; or

1 “(E) subjecting any child in the legal cus-
2 tody of the State to any practice or treatment
3 that seeks to change the child’s sexual orienta-
4 tion or gender identity. It shall be lawful for a
5 professional counselor licensed by the State to
6 assist a minor, without regard to sexual ori-
7 entation or gender identity, to prevent or ad-
8 dress unlawful conduct or unsafe sexual prac-
9 tices.

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

12 “(1) ESTABLISHMENT OF INDIRECT FUNDING
13 PROGRAM.—The Department of Health and Human
14 Services, the Social Security Administration, the De-
15 partment of State, and any other agency authorized
16 by Federal law to administer Federal financial as-
17 sistance for the support of adoption and foster care
18 services shall issue final rules within two years of
19 the enactment of this Act to create an indirect fund-
20 ing program that delivers Federal financial assist-
21 ance to eligible prospective parents for the purpose
22 of obtaining such services through a qualified private
23 agency that they select.

24 “(A) This indirect funding program will
25 entitle a qualified State resident to receive a

1 certificate to assist with the costs of a personal
2 assessment, background check, home study, en-
3 dorsement, certification of a person’s eligibility
4 to act as the guardian of a child in foster care
5 or as the parent of a child available for adop-
6 tion, and placement of a child with an eligible
7 individual or family.

8 “(B) A substantial proportion of appro-
9 priated Federal financial assistance for adop-
10 tion or foster care services, including assistance
11 available under part B and part E of title IV
12 of the Social Security Act, shall be allocated to
13 fund the indirect funding program through the
14 issuance of a certificate to eligible prospective
15 parents.

16 “(C) Each certificate shall be worth an
17 amount to be determined through agency rule-
18 making, but in no event less than \$3,000 as in-
19 dexed to the Consumer Price Index as of Janu-
20 ary 1, 2019.

21 “(D) Participation in this indirect funding
22 program may not be delayed or denied because
23 of a State resident’s race, color, national origin,
24 religion, sex, sexual orientation, or gender iden-
25 tity.

1 “(E) The responsible Federal agencies
2 shall establish policies and procedures designed
3 to ensure that where a referral is required by
4 this section—

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

7 “(ii) all referrals are made in a man-
8 ner consistent with applicable privacy laws
9 and regulations;

10 “(iii) the provider of adoption and fos-
11 ter care placement or related services noti-
12 fies the agency of any referral; and

13 “(iv) each applicant for and recipient
14 of adoption or foster care placement or re-
15 lated services from a provider that receives
16 Federal financial assistance will receive
17 written notice from the provider of the pro-
18 tections set forth in this section when ap-
19 plying for or receiving such services.

20 “(2) IMPLEMENTATION OF INDIRECT FUNDING
21 PROGRAM.—

22 “(A) APPROVED STATE PLAN.—To be eli-
23 gible for Federal financial assistance for adop-
24 tion or foster care services under part B or part
25 E of title IV of the Social Security Act, a State

1 must develop a written plan approved by the
2 Secretary of the Department of Health and
3 Human Services providing that—

4 “(i) the State has established rules,
5 policies, and procedures within 6 months
6 after issuance of final rules under sub-
7 section (c)(1) that ensures the State’s full
8 participation in the indirect funding pro-
9 gram by making available to each qualified
10 State resident on request a certificate as
11 prescribed by subsection (c)(1), to be used
12 solely for the services enumerated in sub-
13 section (c)(1). This certificate may com-
14 mingle funding from Federal and State
15 sources, and such commingled revenues
16 shall be deemed Federal financial assist-
17 ance;

18 “(ii) the State uses its best efforts to
19 increase the number of private organiza-
20 tions within each catchment area that are
21 qualified to provide foster care and adop-
22 tion services, including organizations will-
23 ing to serve all qualified prospective par-
24 ents;

1 “(iii) the State publishes and main-
2 tains a current list of licensed adoption
3 and foster care providers with offices in
4 the State, by catchment area, which list
5 will identify providers that serve all appli-
6 cants, as well as those that serve particular
7 communities and those that provide par-
8 ticular services;

9 “(iv) the State performs a prompt and
10 cost-free eligibility assessment for every
11 prospective parent who applies for a cer-
12 tificate, informs every eligible prospective
13 parent of the licensed adoption and foster
14 care providers in the participant’s
15 catchment area, and may provide addi-
16 tional information to facilitate the prospec-
17 tive parent’s selection of a provider;

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

24 “(vi) when a qualified individual seek-
25 ing adoption or foster care placement or

1 related services is unable to obtain such
2 services from a particular provider—

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

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

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

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

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

20 “(i) deny any licensed provider of
21 adoption or foster care placement or re-
22 lated services the opportunity to partici-
23 pate in the certificate program prescribed
24 by subsection (c)(1);

1 “(ii) deny any licensed provider of
2 adoption or foster care placement or re-
3 lated services reasonable payment for serv-
4 ices actually rendered in reliance on a cer-
5 tificate;

6 “(iii) require a provider of adoption or
7 foster care placement or related services to
8 perform such services in a particular in-
9 stance as a condition of participating in
10 the certificate program prescribed by sub-
11 section (c)(1), unless such service is re-
12 quired by Federal law or imposed pursuant
13 to an agreement between the provider and
14 the State that compensates the provider
15 for such service exclusively with State reve-
16 nues; and

17 “(iv) withhold, suspend, or terminate
18 contracts, cooperative agreements, grants,
19 or other financial assistance when a pro-
20 vider of adoption or foster care placement
21 or related services takes any action per-
22 mitted under this title.

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

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

11 “(d) PRIVATE RECIPIENTS OF FEDERAL FINANCIAL
12 ASSISTANCE.—

13 “(1) PROTECTION FOR DIVERSE PROVIDERS.—
14 A private organization that is eligible to receive Fed-
15 eral financial assistance through the certificate pro-
16 gram prescribed by subsection (c)(1) for providing
17 any adoption or foster care placement or related
18 services may—

19 “(A) decline to accept a certificate without
20 being obligated to perform a particular service,
21 despite receiving certificates to perform other
22 covered adoption or foster care services, so long
23 as the provider gives a referral to the certificate
24 holder consistent with section (c)(2)(A)(vi)(II)–
25 (IV); or

1 “(B) after accepting a certificate, facilitate
2 a mutually voluntary referral that does not un-
3 reasonably delay or disrupt the adoption or fos-
4 ter care evaluation and placement process.

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

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

25 “(e) MISCELLANEOUS.—

1 “(1) CUSTODY OF CHILD IN FOSTER CARE.—
2 For purposes of this section, a child in foster care
3 shall be deemed to be in the legal custody of the
4 State.

5 “(2) RULE OF CONSTRUCTION.—Nothing in
6 this section shall be construed to prohibit an entity
7 receiving Federal financial assistance for adoption,
8 foster care, or related services from making an indi-
9 vidualized placement assessment in the best interest
10 of the child’s health, safety, and welfare.

11 “(3) EFFECTIVE DATES.—

12 “(A) IN GENERAL.—Except as described in
13 subsection (e)(1)(B), the protections under sub-
14 section (b) shall become effective on the date of
15 enactment.

16 “(B) RELIGIOUS PROVIDER EXEMPTION.—

17 “(i) Section (b)(1) shall come into ef-
18 fect with respect to a religious adoption or
19 foster care provider 12 months after the
20 State where the provider operates has im-
21 plemented the certificate program as de-
22 scribed in section (c)(2)(A).

23 “(ii) If the certificate program is not
24 substantially funded as required by sub-
25 section (c), the protections described by

1 subsection (b)(1) shall become unenforce-
2 able as to a religious adoption or foster
3 care provider until funding is provided or
4 restored.

5 “(iii) For purposes of this section, ‘re-
6 ligious adoption or foster care provider’
7 means a licensed or accredited nonprofit
8 provider of adoption or foster care services
9 that—

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

16 “(II) holds itself out to the public
17 as substantially religious, has as its
18 stated purpose in its organic docu-
19 ments that it is religious, and is sub-
20 stantially religious in its current oper-
21 ations.

22 “(4) PRIVATE RIGHTS OF ACTION.—

23 “(A) Nothing in this section shall be con-
24 strued to authorize a right of action against a

1 private organization for the exercise of rights
2 provided under subsection (d)(1).

3 “(B) A private right of action may be
4 brought by a private organization under section
5 1107.

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

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

19 “(7) APPLICATION TO STATES WITH WAIV-
20 ERS.—For any State that, on the date of enactment
21 of this Act, has in effect a waiver approved under
22 section 1130 of the Social Security Act (42 U.S.C.
23 1320a–9), the amendments to this title shall not
24 apply to that State before the expiration of the waiv-
25 er (determined without regard to any extensions), to

1 the extent that an amendment is inconsistent with
2 the terms of the waiver.

3 “(8) EFFECT ON STATE LAWS.—Nothing in
4 this section shall be construed to supersede a State
5 or local law, policy, or contract addressing the legal
6 conditions of receiving Government funding for
7 adoption or foster care services, provided that the
8 State or local law does not directly conflict with this
9 section.

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

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

18 “(b) An educational institution receiving Federal fi-
19 nancial assistance shall reasonably accommodate a student
20 who requests greater privacy with respect to the use of
21 a facility designated for the exclusive use of persons of
22 the same sex, provided that the accommodation does not
23 exclude any student from such a facility to which the stu-
24 dent has a right of access or otherwise prejudice any right
25 or privilege protected under this title.

1 “(c) Nothing in this title shall be construed to alter
2 or affect the Violence Against Women Act of 1994.

3 **“SEC. 612. NEUTRALITY WITH RESPECT TO ABORTION.**

4 “Nothing in this title shall be construed to require
5 or prohibit any person, or public or private entity, to pro-
6 vide or pay for any benefit or service, including the use
7 of facilities, related to an abortion. Nothing in this title
8 shall be construed to permit a penalty to be imposed on
9 any person or any individual because such person or indi-
10 vidual is seeking or has received any benefit or service re-
11 lated to a legal abortion.

12 **“SEC. 613. NO EFFECT ON TITLE IX.**

13 “Nothing contained in this title shall be construed to
14 alter or affect title IX of the Education Amendments of
15 1972 (20 U.S.C. 1681 et seq.). Any claim that a person
16 has been excluded because of sex from participation in,
17 or denied the benefits of, or subjected to discrimination
18 with respect to any education program or activity that re-
19 ceives Federal financial assistance shall be governed by
20 title IX and not this title.

21 **“SEC. 614. ADDITIONAL DEFINITIONS.**

22 “For purposes of this title:

23 “(1) The term ‘gender identity’ means the gen-
24 der-related identity, appearance, mannerisms, or
25 other gender-related characteristics of an individual,

1 without regard to the individual’s designated sex at
2 birth. A person’s gender identity can be shown by
3 providing evidence, including medical history, care or
4 treatment of the gender identity, consistent and uni-
5 form assertion of the gender identity, or other evi-
6 dence that the gender identity is sincerely held, part
7 of a person’s core identity, and not being asserted
8 for an improper purpose.

9 “(2) The terms ‘religion’ and ‘religious’ include
10 all aspects of religious belief, observance, and prac-
11 tice, whether or not compelled by, or central to, a
12 system of religion.

13 “(3) The term ‘religious corporation, associa-
14 tion, educational institution, or society’ includes—

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

17 “(B) a nonprofit corporation, association,
18 educational institution, society, or other non-
19 profit entity that is, in whole or substantial
20 part, owned, supported, controlled, or managed
21 by a particular religion or by a particular
22 church, denomination, convention, or associa-
23 tion of churches or other houses of worship; or

24 “(C) a nonprofit corporation, association,
25 educational institution, society, or other non-

1 profit entity that holds itself out to the public
2 as substantially religious, has as its stated pur-
3 pose in its organic documents that it is reli-
4 gious, and is substantially religious in its cur-
5 rent operations.

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

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

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

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

22 **SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.**

23 (a) DEFINITIONS.—Section 701 of the Civil Rights
24 Act of 1964 (42 U.S.C. 2000e) is amended—

1 (1) in subsection (j) by inserting “(1)” after
2 “(j)”;

3 (2) in subsection (j)(1) by inserting “, after ini-
4 tiating and engaging in an affirmative and bona fide
5 effort,” after “unable”;

6 (3) in subsection (j)(1) by striking “an employ-
7 ee’s” and all that follows through “religious” and in-
8 serting “an employee’s religious”;

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

11 “(2)(A) In this subsection, the term ‘employee’
12 includes an employee (as defined in subsection (f)),
13 or a prospective employee, who, with or without rea-
14 sonable accommodation, is qualified to perform the
15 essential functions of the employment position that
16 such individual holds or desires.

17 “(B) In this paragraph, the term ‘perform the
18 essential functions’ includes carrying out the core re-
19 quirements of an employment position and does not
20 include carrying out practices relating to clothing,
21 practices relating to taking time off, or other prac-
22 tices that may have a temporary or tangential im-
23 pact on the ability to perform job functions, if any
24 of the practices described in this subparagraph re-
25 strict the ability to wear religious clothing, to take

1 time off for a holy day, or to participate in a reli-
2 gious observance or practice.

3 “(3) In this subsection, the term ‘undue hard-
4 ship’ means an accommodation requiring significant
5 difficulty or expense.

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

10 “(i) the identifiable cost of the accom-
11 modation, including the costs of loss of
12 productivity and of retraining or hiring
13 employees or transferring employees from
14 one facility to another;

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

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

22 “(iv) whether the accommodation will
23 obstruct the employer from providing its
24 customers or clients the full and equal en-
25 joyment of the goods, services, facilities,

1 privileges, advantages, and accommoda-
2 tions offered.

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

8 (5) by inserting after subsection (n) the fol-
9 lowing:

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

20 “(2) The term ‘sexual orientation’ means homosex-
21 uality, heterosexuality, or bisexuality.

22 “(3) The terms ‘religion’ and ‘religious’ include all
23 aspects of religious belief, observance, and practice, wheth-
24 er or not compelled by, or central to, a system of religion.

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

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

5 “(B) a nonprofit corporation, association, edu-
6 cational institution, society, or other nonprofit entity
7 that is, in whole or substantial part, owned, sup-
8 ported, controlled, or managed by a particular reli-
9 gion or by a particular church, denomination, con-
10 vention, or association of churches or other houses
11 of worship; or

12 “(C) a nonprofit corporation, association, edu-
13 cational institution, society, or other nonprofit entity
14 that holds itself out to the public as substantially re-
15 ligious, has as its stated purpose in its organic docu-
16 ments that it is religious, and is substantially reli-
17 gious in its current operations.”.

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

20 (1) by inserting “(1)” after “(a)”;

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

23 “State.

24 “(2)(A) This title shall not apply”; and

1 (3) by adding at the end of paragraph (2) the
2 following:

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

7 “(i) a church or its integrated auxiliaries,
8 a convention or association of churches, or a re-
9 ligious order, as described in section
10 6033(a)(3)(A)(i) and section 6033(a)(3)(A)(iii)
11 of the Internal Revenue Code of 1986;

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

17 “(iii) a religious educational institution
18 that is eligible for exemption under section
19 703(e)(2) of this subchapter;

20 “(iv) a religious corporation, association,
21 or society under section 702(a) of this sub-
22 chapter that is eligible for tax-exempt status
23 under section 501(c)(3) of the Internal Revenue
24 Code of 1986 and that employs only individuals
25 of the employer’s religion, unless the employee

1 demonstrates that the employer has not applied
2 with reasonable consistency its religious stand-
3 ard cited as the reason for the adverse employ-
4 ment action; or

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

8 “(C) A claim under this subchapter
9 against an employer described by section
10 702(a)(2)(B) for discrimination because of sex
11 shall not include claims of discrimination be-
12 cause of sexual orientation or gender identity.
13 This provision shall not otherwise affect claims
14 of sex discrimination, and nothing in this provi-
15 sion shall prevent a person, regardless of sexual
16 orientation or gender identity, from bringing a
17 claim of sex discrimination.

18 “(D) No religious corporation, association,
19 or society otherwise eligible under section
20 (2)(B)(iv) of this section shall be ineligible be-
21 cause of nonrecognition under section 501(c)(3)
22 of the Internal Revenue Code, unless such tax
23 treatment is consistent with section
24 501(c)(3)(B) of that Code.

1 “(E) No employer whose primary purpose
2 and activity is to deliver medical services shall
3 be eligible for the exemptions under section
4 702(a)(2)(B).

5 “(F) Nothing in this section shall prejudice
6 rights and defenses available under sections
7 702(a) and 703(e)(2).”.

8 (c) UNLAWFUL EMPLOYMENT PRACTICES.—Section
9 703 of such Act (42 U.S.C. 2000e–2) is amended—

10 (1) except in subsection (e), by inserting “sex-
11 ual orientation, gender identity,” immediately before
12 “or national origin” each place it appears;

13 (2) in subsection (e)(1), by striking “enter-
14 prise,” and inserting “enterprise, if an individual is
15 recognized as qualified in accordance with gender
16 identity when sex is a bona fide occupational quali-
17 fication,”;

18 (3) in the heading of subsection (m), by strik-
19 ing “SEX,” and inserting “SEX, SEXUAL ORIENTA-
20 TION, GENDER IDENTITY,”; and

21 (4) by adding at the end the following:

22 “(o)(1) In this section:

23 “(A) The term ‘employee’ has the meaning
24 given the term in section 701(j)(2).

1 “(B) The term ‘leave of general usage’ means
2 leave provided under the policy or program of an
3 employer, under which—

4 “(i) an employee may take leave by adjust-
5 ing or altering the work schedule or assignment
6 of the employee according to criteria deter-
7 mined by the employer; and

8 “(ii) the employee may determine the pur-
9 pose for which the leave is to be utilized.

10 “(2) For purposes of determining whether an em-
11 ployer has committed an unlawful employment practice
12 under this title by failing to provide a reasonable accom-
13 modation to the religious observance or practice of an em-
14 ployee, for an accommodation to be considered to be rea-
15 sonable, the accommodation shall remove the conflict be-
16 tween employment requirements and the religious observ-
17 ance or practice of the employee.

18 “(3) An employer shall be considered to commit such
19 a practice by failing to provide such a reasonable accom-
20 modation for an employee if the employer refuses to per-
21 mit the employee to utilize leave of general usage to re-
22 move such a conflict solely because the leave will be used
23 to accommodate the religious observance or practice of the
24 employee.”.

1 (d) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—
2 Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.
3 2000e-3) is amended—

4 (1) in subsection (b) by inserting “sexual ori-
5 entation, gender identity,” before “national origin”
6 each place it appears;

7 (2) in subsection (b) by striking “employment.”
8 and inserting “employment, if an individual is recog-
9 nized as qualified in accordance with gender identity
10 when sex is a bona fide occupational qualification.”;
11 and

12 (3) by inserting after subsection (b) the fol-
13 lowing:

14 “(c) PROHIBITED SANCTIONS FOR CERTAIN EM-
15 PLOYEE SPEECH.—

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

24 “(2) An employer may not discharge, demote,
25 terminate, or refuse to hire any person, or retaliate

1 against, harass, or discriminate in matters of com-
2 pensation or in terms, privileges, and conditions of
3 employment against any person otherwise qualified
4 for employment, for lawful expression or expressive
5 activity outside of the workplace regarding the per-
6 son’s beliefs that—

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

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

13 The employee’s expression is not protected under
14 subsection (c)(2) if it directly and materially im-
15 pedes the employee’s performance of an essential job
16 function.

17 “(3) Paragraphs (1) and (2) shall not apply to
18 a nonprofit organization that operates to express or
19 advocate particular viewpoints, or to an employer
20 that is a religious corporation, association, edu-
21 cational institution, or society covered by section
22 701(o)(4).”.

23 (e) CLAIMS.—Section 706(g)(2)(A) of the Civil
24 Rights Act of 1964 (42 U.S.C. 2000e–5(g)(2)(A)) is

1 amended by striking “sex,” and inserting “sex, sexual ori-
2 entation, gender identity,”.

3 (f) EMPLOYMENT BY FEDERAL GOVERNMENT.—Sec-
4 tion 717 of the Civil Rights Act of 1964 (42 U.S.C.
5 2000e–16) is amended—

6 (1) in subsection (a), by striking “sex,” and in-
7 serting “sex, sexual orientation, gender identity,”;
8 and

9 (2) in subsection (c), by striking “sex” and in-
10 serting “sex, sexual orientation, gender identity,”.

11 (g) GOVERNMENT EMPLOYEE RIGHTS ACT OF
12 1991.—The Government Employee Rights Act of 1991
13 (title III of Public Law 102–166; 42 U.S.C. 2000e–16 et
14 seq.) is amended—

15 (1) in section 301(b), by striking “sex,” and in-
16 serting “sex, sexual orientation, gender identity,”;
17 and

18 (2) in section 302(a)(1), by striking “sex,” and
19 inserting “sex, sexual orientation, gender identity,”.

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

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

1 (i) PRIVACY IN SEX-DESIGNATED FACILITIES.—The
2 Civil Rights Act of 1964 (42 U.S.C. 2000e–19), as amend-
3 ed by subsection (h), is amended by adding at the end
4 the following:

5 “SEC. 720. If equivalent facilities and benefits are
6 made available and without regard to a prohibited classi-
7 fication under this subchapter, an employer shall reason-
8 ably accommodate an employee who requests greater pri-
9 vacy within a facility intended for the exclusive use of per-
10 sons of the same sex.”.

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

15 (k) CONGRESSIONAL ACCOUNTABILITY ACT OF
16 1995.—Section 201(a)(1) of the Congressional Account-
17 ability Act of 1995 (2 U.S.C. 1311(a)(1)) is amended by
18 inserting “sexual orientation, gender identity,” before “or
19 national origin,”.

20 (l) TITLE 5, UNITED STATES CODE.—Chapter 23 of
21 title 5, United States Code, is amended—

22 (1) in section 2301(b)(2), by striking “sex,”
23 and inserting “sex, sexual orientation, gender iden-
24 tity,”; and

25 (2) in section 2302—

1 (A) in subsection (b)(1)(A), by inserting
2 “sexual orientation, gender identity,” before “or
3 national origin,”; and

4 (B) in subsection (d)(1), by inserting “sex-
5 ual orientation, gender identity,” before “or na-
6 tional origin;”.

7 **SEC. 5. HOUSING DISCRIMINATION PROHIBITED.**

8 (a) IN GENERAL.—

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

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

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

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

1 liefs, observances, tenets, or practices” immediately
2 before “is restricted.”

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

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

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

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

16 “(q) ‘Gender identity’ means the gender-related iden-
17 tity, appearance, mannerisms, or other gender-related
18 characteristics of an individual, without regard to the indi-
19 vidual’s designated sex at birth. A person’s gender identity
20 can be shown by providing evidence, including medical his-
21 tory, care or treatment of the gender identity, consistent
22 and uniform assertion of the gender identity, or other evi-
23 dence that the gender identity is sincerely held, part of
24 a person’s core identity, and not being asserted for an im-
25 proper purpose.

1 “(r) ‘Operates’ includes the rental or occupancy of
2 dwellings through a lease or contract with the dwelling’s
3 actual owner or primary operator.

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

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

9 **SEC. 6. OTHER NONDISCRIMINATION REQUIREMENTS.**

10 (a) MARRIAGE RECOGNITION.—

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

13 **“§ 7. Marriage**

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

21 “(b) In this section, the term ‘State’ means a State,
22 the District of Columbia, the Commonwealth of Puerto
23 Rico, or any other territory or possession of the United
24 States.”.

1 (2) Section 1738C of title 28, United States
2 Code, is repealed, and the table of sections at the be-
3 ginning of chapter 115 of title 28, United States
4 Code, is amended by striking the item relating to
5 that section.

6 (b) DESEGREGATION OF PUBLIC FACILITIES.—Sec-
7 tion 301(a) of the Civil Rights Act of 1964 (42 U.S.C.
8 2000b(a)) is amended by inserting “sex, sexual orienta-
9 tion, gender identity,” before “or national origin”.

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

13 (1) in section 1862, by inserting “sexual ori-
14 entation, gender identity,” after “sex,” each place
15 that term appears;

16 (2) in section 1867, by inserting “sexual ori-
17 entation, gender identity,” after “sex,” each place
18 that term appears; and

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

21 “(l) The term ‘sexual orientation’ means homosex-
22 uality, heterosexuality, or bisexuality.

23 “(m) The term ‘gender identity’ means the gender-
24 related identity, appearance, mannerisms, or other gender-
25 related characteristics of an individual, without regard to

1 the individual’s designated sex at birth. A person’s gender
2 identity can be shown by providing evidence, including
3 medical history, care or treatment of the gender identity,
4 consistent and uniform assertion of the gender identity,
5 or other evidence that the gender identity is sincerely held,
6 part of a person’s core identity, and not being asserted
7 for an improper purpose.”.

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

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

14 (2) in section 702—

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

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

19 “(f) The term ‘gender identity’ means the gender-re-
20 lated identity, appearance, mannerisms, or other gender-
21 related characteristics of an individual, without regard to
22 the individual’s designated sex at birth. A person’s gender
23 identity can be shown by providing evidence, including
24 medical history, care or treatment of the gender identity,
25 consistent and uniform assertion of the gender identity,

1 or other evidence that the gender identity is sincerely held,
 2 part of a person’s core identity, and not being asserted
 3 for an improper purpose.”; and

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

6 “(h) The term ‘sexual orientation’ means homosex-
 7 uality, heterosexuality, or bisexuality.”; and

8 (3) in section 705, by inserting “, sexual ori-
 9 entation, gender identity,” after “sex”.

10 (e) **DISCRIMINATION IN REFUGEE RESETTLEMENT**
 11 **PROHIBITED.**—Section 412(a)(5) of the Immigration and
 12 Nationality Act (8 U.S.C. 1522(a)(5)) is amended by in-
 13 serting “sexual orientation, gender identity,” after “sex,”.

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

17 **“PART G—SAFE SCHOOLS IMPROVEMENT**

18 **“SEC. 4701. PURPOSE.**

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

22 **“SEC. 4702. ANTI-BULLYING POLICIES.**

23 “(a) **BULLYING.**—In this part, the term ‘bullying’ in-
 24 cludes cyber-bullying through electronic communications
 25 that take place away from school or a school-sponsored

1 or school-related event, but only if the cyber-bullying in-
2 fringes on the rights of the student at school as set forth
3 in subparagraph (A) or (B) of subsection (b)(1).

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

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

10 “(A) that is sufficiently severe, persistent,
11 or pervasive that a reasonable person would ex-
12 pect such bullying or harassment to limit a stu-
13 dent’s ability to participate in, or benefit from,
14 a program or activity of a public school or local
15 educational agency; or

16 “(B) that is sufficiently severe, persistent,
17 or pervasive that a reasonable person would ex-
18 pect such bullying or harassment to create a
19 hostile or abusive educational environment, ad-
20 versely affecting a student’s education, at a
21 program or activity of a public school or local
22 educational agency, including acts of verbal,
23 nonverbal, or physical aggression or intima-
24 tion.

1 “(2) The policies required under paragraph (1)
2 shall include a prohibition of bullying or harassment
3 conduct based on—

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

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

11 “(C) any other distinguishing characteris-
12 tics that may be defined by the State or local
13 educational agency, including being homeless or
14 the child or ward of a member of the Armed
15 Forces.

16 “(3) Provide—

17 “(A) annual notice to students, parents,
18 and educational professionals describing the full
19 range of the local educational agency’s policies
20 required under paragraph (1) and shall include
21 an affirmative statement of the protections for
22 free speech, assembly, and expression under the
23 First Amendment and any other applicable law;
24 and

1 “(B) grievance procedures for students or
2 parents to register complaints regarding the
3 prohibited conduct contained in such local edu-
4 cational agency’s discipline policies, including—

5 “(i) the name of the local educational
6 agency officials who are designated as re-
7 sponsible for receiving such complaints;
8 and

9 “(ii) timelines that the local edu-
10 cational agency will establish in the resolu-
11 tion of such complaints.

12 “(4) Collect annual incidence and frequency of
13 incidents data about the conduct prohibited by the
14 policies described in paragraph (1) at the school
15 building level that are accurate and complete and
16 publicly report such data at the school level and
17 local educational agency level. The local educational
18 agency shall ensure that victims or persons respon-
19 sible for such conduct are not identifiable.

20 “(5) Encourage positive and preventative ap-
21 proaches to school discipline that minimize students’
22 removal from instruction and ensure that students,
23 including students described in paragraph (2), are
24 not subject to disproportionate punishment.

1 **“SEC. 4703. STATE REPORTS.**

2 “The chief executive officer of a State that receives
3 a grant under this title, in cooperation with the State edu-
4 cational agency, shall submit a biennial report to the Sec-
5 retary—

6 “(1) on the information reported by local edu-
7 cational agencies in the State pursuant to section
8 4702(b)(4); and

9 “(2) describing the State’s plans for supporting
10 local educational agency efforts to address the con-
11 duct prohibited by the policies described in section
12 4702(b)(1).

13 **“SEC. 4704. EVALUATION.**

14 “(a) BIENNIAL EVALUATION.—The Secretary shall
15 conduct an independent biennial evaluation of programs
16 and policies to combat bullying and harassment in elemen-
17 tary schools and secondary schools, including implementa-
18 tion of the requirements described in section 4702, includ-
19 ing whether such requirements have appreciably reduced
20 the level of the prohibited conduct and have conducted ef-
21 fective parent involvement and programs that train cov-
22 ered school employees how to identify and stop bullying
23 and harassment, as those terms are defined in section
24 4702.

25 “(b) DATA COLLECTION.—The Commissioner for
26 Education Statistics shall collect data from States, that

1 are subject to independent review, to determine the inci-
2 dence and frequency of conduct prohibited by the policies
3 described in section 4702.

4 “(c) BIENNIAL REPORT.—Not later than January 1
5 of the first calendar year that begins after the effective
6 date of this section and every 2 years thereafter, the Sec-
7 retary shall submit to the President and Congress a report
8 on the findings of the evaluation conducted under sub-
9 section (a) together with the data collected under sub-
10 section (b) and data submitted by the States under section
11 4703.

12 **“SEC. 4705. EFFECT ON OTHER LAWS.**

13 “(a) FEDERAL AND STATE NONDISCRIMINATION
14 LAWS.—Nothing in this part shall be construed to invali-
15 date or limit rights, remedies, procedures, or legal stand-
16 ards available to victims of discrimination under any other
17 Federal law or law of a State or political subdivision of
18 a State, including title VI of the Civil Rights Act of 1964
19 (42 U.S.C. 2000d et seq.), title IX of the Education
20 Amendments of 1972 (20 U.S.C. 1681 et seq.), section
21 504 or 505 of the Rehabilitation Act of 1973 (29 U.S.C.
22 794, 794a), or the Americans with Disabilities Act of 1990
23 (42 U.S.C. 12101 et seq.). The obligations imposed by this
24 part are in addition to those imposed by title VI of the
25 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title

1 IX of the Education Amendments of 1972 (20 U.S.C.
2 1681 et seq.), section 504 of the Rehabilitation Act of
3 1973 (29 U.S.C. 794), and the Americans with Disabil-
4 ities Act of 1990 (42 U.S.C. 12101 et seq.).

5 “(b) FREE SPEECH AND EXPRESSION.—Nothing in
6 this part shall be construed to deny any student a right
7 of free speech, assembly, or expression protected under the
8 Constitution or any other Federal law, or to permit unlaw-
9 ful viewpoint discrimination. No policy established under
10 this part may prevent or punish a student’s expression of
11 religious, political, or philosophical beliefs in the classroom
12 or at school activities when such expression takes place
13 on equal terms with similar expressions of belief allowed
14 by the school in the same setting.

15 **“SEC. 4706. RULE OF CONSTRUCTION.**

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

20 **SEC. 7. PROHIBITION ON RETALIATION AND UNEQUAL**
21 **TREATMENT.**

22 Title XI of the Civil Rights Act of 1964 (42 U.S.C.
23 2000h et seq.) is amended by adding at the end the fol-
24 lowing:

1 **“SEC. 1107. NONRETALIATION.**

2 “(a) IN GENERAL.—

3 “(1) No government shall take any adverse ac-
4 tion because of—

5 “(A) the existence or invocation of any ex-
6 emption, defense, or remedy under this Act; or

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

9 “(2) Nothing in this subsection shall be con-
10 strued to invalidate or supersede a law without evi-
11 dence that it was enacted, enforced, or administered
12 for reasons prohibited by paragraph (1).

13 “(b) PROHIBITION ON CERTAIN GOVERNMENT AC-
14 TIONS.—

15 “(1) PERSONS PROTECTED FROM DISCRIMINA-
16 TION.—No government shall take any adverse action
17 that, as applied, conflicts with any protection from
18 discrimination under this Act.

19 “(2) CERTAIN RELIGIOUS PROPERTIES AND RE-
20 LIGIOUS EMPLOYERS.—

21 “(A) No government shall take any ad-
22 verse action that, as applied, is inconsistent
23 with the exemptions under section 201(b)(11).

24 “(B) No government shall take any ad-
25 verse action that, as applied, abridges the ex-
26 emptions provided under section 702(a)(2)(B).

1 “(C) Nothing in this subsection shall be
2 construed to invalidate any other law that oth-
3 erwise applies to a religious property exempt
4 under section 201(b)(11) or a religious em-
5 ployer exempt under section 702(a)(2)(B).

6 “(3) ADOPTION AND FOSTER CARE FUNDING,
7 LICENSURE, AND CERTIFICATION.—No State shall
8 enforce a law with respect to a particular contract,
9 cooperative agreement, grant, guarantee, or benefit
10 if that law, as applied, abridges any right or benefit
11 under section 610, unless the State demonstrates
12 that the contract, cooperative agreement, grant,
13 guarantee, or benefit is solely funded by revenues of
14 a State or political subdivision thereof. A State or
15 its political subdivision may commingle its revenues
16 with Federal financial assistance for the purpose of
17 providing financial aid to adoption agencies; such
18 commingled revenues shall be deemed Federal finan-
19 cial assistance. No government may deny, withhold,
20 or suspend the license or certification of a religiously
21 affiliated adoption or foster care agency because of
22 its religious teachings or practices, provided that the
23 agency complies with generally applicable health and
24 safety standards.

25 “(c) RELIGIOUS EDUCATIONAL INSTITUTIONS.—

1 “(1) NO ADVERSE ACTION FOR RELIGIOUS MIS-
2 SION.—No government shall take any adverse action
3 against a religious educational institution, its fac-
4 ulty, students, or graduates because of its religious
5 mission.

6 “(2) ACCREDITATION.—No accrediting agency
7 shall take an adverse action against a religious edu-
8 cational institution for noncompliance with an ac-
9 creditation standard that would require the institu-
10 tion to act inconsistently with its religious mission
11 as related to marriage, family, sexuality, or gender
12 identity, except as these matters pertain to race,
13 color, or national origin. Nothing in this provision
14 shall be interpreted to deny an accrediting agency
15 the authority under section 496(a) of the Higher
16 Education Act (20 U.S.C. 1099b(a)) to take action
17 necessary to ensure that the courses or programs of
18 instruction, training, or study offered by an institu-
19 tion of higher education are of sufficient quality to
20 achieve the stated objective for which the courses or
21 the programs are offered. An accrediting agency
22 does not demonstrate that its adverse action against
23 a religious educational institution is authorized
24 under section 1099b(a) merely by showing that the
25 action results from a rule of general applicability.

1 “(3) REMEDIES.—A religious educational insti-
2 tution harmed by a violation of this subsection may
3 obtain injunctive relief against the responsible ac-
4 crediting agency. Upon receiving a copy of such an
5 injunction, the Department of Education shall deem
6 the affected religious educational institution as ac-
7 credited for all purposes under Federal law. The De-
8 partment shall deny recognition for any purpose to
9 an accrediting agency that knowingly violates this
10 subsection. An accrediting agency that loses its gov-
11 ernment recognition may apply with the Department
12 to restore its recognition if the agency demonstrates
13 that the violation resulted from mistake or inadvert-
14 ence. Within two years of the enactment of this Act,
15 the Department shall issue final rules prescribing
16 the procedures governing this section.

17 “(d) NO RELIGIOUS TESTS.—No government shall—

18 “(1) exclude a person from an occupation by
19 depriving a person of professional credentials or im-
20 posing a fine or penalty, including through a private
21 right of action, because of the person’s religious be-
22 liefs or affiliations, provided that the person other-
23 wise complies with occupational or professional
24 standards that, in purpose and effect, are neutral to-
25 ward religion and generally applicable; or

1 “(2) determine eligibility for public office be-
2 cause of religious beliefs or affiliations.

3 “(e) SCOPE OF APPLICATION.—Subsections (a)
4 through (d) apply in any case in which—

5 “(1) section 5 of the Fourteenth Amendment to
6 the Constitution of the United States grants law-
7 making power to Congress;

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

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

15 “(4) Congress has power under the Necessary
16 and Proper Clause of article I, section 8 to effec-
17 tuate the exercise of its enumerated powers; or

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

20 “(f) JUDICIAL RELIEF.—

21 “(1) CAUSE OF ACTION.—A person or organiza-
22 tion may assert an actual violation of this section,
23 or a credible threat of such a violation, as a claim
24 or defense in a judicial, administrative, or arbitra-
25 tion proceeding and obtain appropriate relief against

1 a government or accrediting agency, including attor-
2 neys' fees. A State shall not be immune under the
3 Eleventh Amendment to the Constitution of the
4 United States from a claim under this section.

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

11 “(g) DEFINITIONS.—In section 1107:

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

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

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

24 “(4) The term ‘adverse action’ includes action
25 that suspends, revokes, or withholds licenses, per-

1 mits, certifications, professional credentials, guaran-
2 tees, contracts, or cooperative agreements; denies or
3 revokes scholarships, grants, loans, a tax exemption
4 or tax-exempt status; denies access to government-
5 sponsored facilities, activities, or programs; or that
6 imposes any other penalty or denies an otherwise
7 available benefit. Except for a violation of subsection
8 (a)(1) of this section, adverse action does not include
9 a State’s refusal to subsidize contracts, grants,
10 loans, or cooperative agreements with exclusively
11 State revenues because of noncompliance with State
12 standards that, in purpose and effect, are neutral to-
13 ward religion and generally applicable. Commingled
14 State and Federal revenues shall be deemed Federal
15 revenues. Adverse action does include suspending,
16 revoking, or withholding scholarships, grants, and
17 loans, or access to government-sponsored facilities,
18 activities, or programs to qualified students or grad-
19 uates of religious educational institutions, notwith-
20 standing that the scholarships, grants, loans, facili-
21 ties, activities, or programs are funded with State
22 revenues.

23 “(5) The term ‘government’ means—

1 “(A) a State, county, municipality, or
2 other government entity created under the au-
3 thority of a State;

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

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

9 “(D) the United States, a branch, depart-
10 ment, agency, instrumentality, or official of the
11 United States, and any other person acting
12 under color of Federal law.

13 “(6) The terms ‘religion’ and ‘religious’ include
14 all aspects of religious belief, observance, and prac-
15 tice, whether or not compelled by, or central to, a
16 system of religion.

17 “(7) The term ‘religious corporation, associa-
18 tion, educational institution, or society’ include—

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

21 “(B) a nonprofit corporation, association,
22 educational institution, society, or other non-
23 profit entity that is, in whole or in substantial
24 part, owned, supported, controlled, or managed
25 by a particular religion or by a particular

1 church, denomination, convention, or associa-
2 tion of churches or other houses of worship; or

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

10 “(8) The term ‘religious educational institution’
11 means any organization covered by section
12 703(e)(2).

13 “(9) The term ‘religious mission’ includes reli-
14 gious affiliation, religious tenets, religious teachings,
15 and religious standards, including policies or deci-
16 sions related to such affiliation, tenets, teachings, or
17 standards with respect to housing, employment, cur-
18 riculum, self-governance, or student admission, con-
19 tinuing enrollment, or graduation.

20 “(h) CONSTRUCTION.—This section shall supersede
21 State or local law as provided for expressly herein. Noth-
22 ing contained in section 1107 shall be construed as indi-
23 cating an intent on the part of Congress to occupy the
24 field in which this Act operates to the exclusion of State
25 or local laws on the same subject matter.”.

1 **SEC. 8. PRESERVATION OF TAX-EXEMPT STATUS.**

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

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

6 (2) by adding at the end the following:

7 “(B)(i) For purposes of Federal law, any deter-
8 mination whether an organization is organized or op-
9 erated exclusively for religious, charitable, scientific,
10 literary, or educational purposes or complies with
11 legal standards of charity shall be made without re-
12 gard to the organization’s religious beliefs or prac-
13 tices concerning marriage, family, or sexuality, ex-
14 cept insofar as such practices pertain to race or
15 criminal sexual offenses punishable under constitu-
16 tionally valid Federal or State law.

17 “(ii) As used in subsection (B)(i), the term ‘re-
18 ligious’ includes all aspects of religious belief, ob-
19 servance, and practice, whether or not compelled by,
20 or central to, a system of religion.”.

21 **SEC. 9. SEVERABILITY.**

22 If any provision of this Act, or the application of any
23 provision to any individual or circumstance, is held to be
24 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.

○