

# EQUALITY ACT

MAY 10, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 5]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5) to prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:  
Strike all that follows after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Equality Act”.

**SEC. 2. FINDINGS AND PURPOSE.**

(a) **FINDINGS.**—Congress finds the following:

(1) Discrimination can occur on the basis of the sex, sexual orientation, gender identity, or pregnancy, childbirth, or a related medical condition of an individual, as well as because of sex-based stereotypes. Each of these factors alone can serve as the basis for discrimination, and each is a form of sex discrimination.

(2) A single instance of discrimination may have more than one basis. For example, discrimination against a married same-sex couple could be based on the sex stereotype that marriage should only be between heterosexual couples, the sexual orientation of the two individuals in the couple, or both. Discrimination against a pregnant lesbian could be based on her sex, her sexual orientation, her pregnancy, or on the basis of multiple factors.

(3) Lesbian, gay, bisexual, transgender, and queer (referred to as “LGBTQ”) people commonly experience discrimination in securing access to public accommodations—including restaurants, senior centers, stores, places of or establishments that provide entertainment, health care facilities, shelters, government offices, youth service providers including adoption and foster care providers, and transportation. Forms of discrimination include the exclusion and denial of entry, unequal or unfair treatment, harassment, and violence. This discrimination prevents the full participation of LGBTQ people in society and disrupts the free flow of commerce.

(4) Women also have faced discrimination in many establishments such as stores and restaurants, and places or establishments that provide other goods or services, such as entertainment or transportation, including sexual harassment, differential pricing for substantially similar products and services, and denial of services because they are pregnant or breastfeeding.

(5) Many employers already and continue to take proactive steps, beyond those required by some States and localities, to ensure they are fostering positive and respectful cultures for all employees. Many places of public accommodation also recognize the economic imperative to offer goods and services to as many consumers as possible.

(6) Regular and ongoing discrimination against LGBTQ people, as well as women, in accessing public accommodations contributes to negative social and economic outcomes, and in the case of public accommodations operated by State and local governments, abridges individuals’ constitutional rights.

(7) The discredited practice known as “conversion therapy” is a form of discrimination that harms LGBTQ people by undermining individuals’ sense of self worth, increasing suicide ideation and substance abuse, exacerbating family conflict, and contributing to second class status.

(8) Both LGBTQ people and women face widespread discrimination in employment and various services, including by entities that receive Federal financial assistance. Such discrimination—

(A) is particularly troubling and inappropriate for programs and services funded wholly or in part by the Federal Government;

(B) undermines national progress toward equal treatment regardless of sex, sexual orientation, or gender identity; and

(C) is inconsistent with the constitutional principle of equal protection under the Fourteenth Amendment to the Constitution of the United States.

(9) Federal courts have widely recognized that, in enacting the Civil Rights Act of 1964, Congress validly invoked its powers under the Fourteenth Amendment to provide a full range of remedies in response to persistent, widespread, and pervasive discrimination by both private and government actors.

(10) Discrimination by State and local governments on the basis of sexual orientation or gender identity in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. In many circumstances, such discrimination also violates other constitutional rights such as those of liberty and privacy under the due process clause of the Fourteenth Amendment.

(11) Individuals who are LGBTQ, or are perceived to be LGBTQ, have been subjected to a history and pattern of persistent, widespread, and pervasive discrimination on the bases of sexual orientation and gender identity by both private sector and Federal, State, and local government actors, including in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance. An explicit and comprehensive national

solution is needed to address such discrimination, which has sometimes resulted in violence or death, including the full range of remedies available under the Civil Rights Act of 1964.

(12) Numerous provisions of Federal law expressly prohibit discrimination on the basis of sex, and Federal agencies and courts have correctly interpreted these prohibitions on sex discrimination to include discrimination based on sexual orientation, gender identity, and sex stereotypes. In particular, the Equal Employment Opportunity Commission correctly interpreted title VII of the Civil Rights Act of 1964 in *Macy v. Holder*, *Baldwin v. Foxx*, and *Lusardi v. McHugh*.

(13) The absence of explicit prohibitions of discrimination on the basis of sexual orientation and gender identity under Federal statutory law has created uncertainty for employers and other entities covered by Federal nondiscrimination laws and caused unnecessary hardships for LGBTQ individuals.

(14) LGBTQ people often face discrimination when seeking to rent or purchase housing, as well as in every other aspect of obtaining and maintaining housing. LGBTQ people in same-sex relationships are often discriminated against when two names associated with one gender appear on a housing application, and transgender people often encounter discrimination when credit checks or inquiries reveal a former name.

(15) National surveys, including a study commissioned by the Department of Housing and Urban Development, show that housing discrimination against LGBTQ people is very prevalent. For instance, when same-sex couples inquire about housing that is available for rent, they are less likely to receive positive responses from landlords. A national matched-pair testing investigation found that nearly one-half of same-sex couples face adverse, differential treatment when seeking elder housing. According to other studies, transgender people have half the homeownership rate of non-transgender people and about 1 in 5 transgender people experience homelessness.

(16) As a result of the absence of explicit prohibitions against discrimination on the basis of sexual orientation and gender identity, credit applicants who are LGBTQ, or perceived to be LGBTQ, have unequal opportunities to establish credit. LGBTQ people can experience being denied a mortgage, credit card, student loan, or many other types of credit simply because of their sexual orientation or gender identity.

(17) Numerous studies demonstrate that LGBTQ people, especially transgender people and women, are economically disadvantaged and at a higher risk for poverty compared with other groups of people. For example, older women in same-sex couples have twice the poverty rate of older different-sex couples.

(18) The right to an impartial jury of one's peers and the reciprocal right to jury service are fundamental to the free and democratic system of justice in the United States and are based in the Bill of Rights. There is, however, an unfortunate and long-documented history in the United States of attorneys discriminating against LGBTQ individuals, or those perceived to be LGBTQ, in jury selection. Failure to bar peremptory challenges based on the actual or perceived sexual orientation or gender identity of an individual not only erodes a fundamental right, duty, and obligation of being a citizen of the United States, but also unfairly creates a second class of citizenship for LGBTQ victims, witnesses, plaintiffs, and defendants.

(19) Numerous studies document the shortage of qualified and available homes for the 437,000 youth in the child welfare system and the negative outcomes for the many youth who live in group care as opposed to a loving home or who age out without a permanent family. Although same-sex couples are 7 times more likely to foster or adopt than their different-sex counterparts, many child placing agencies refuse to serve same-sex couples and LGBTQ individuals. This has resulted in a reduction of the pool of qualified and available homes for youth in the child welfare system who need placement on a temporary or permanent basis. Barring discrimination in foster care and adoption will increase the number of homes available to foster children waiting for foster and adoptive families.

(20) LGBTQ youth are overrepresented in the foster care system by at least a factor of two and report twice the rate of poor treatment while in care compared to their non-LGBTQ counterparts. LGBTQ youth in foster care have a higher average number of placements, higher likelihood of living in a group home, and higher rates of hospitalization for emotional reasons and juvenile justice involvement than their non-LGBTQ peers because of the high level of bias and discrimination that they face and the difficulty of finding affirming foster placements. Further, due to their physical distance from friends and family, traumatic experiences, and potentially unstable living situations, all youth in-

volved with child welfare are at risk for being targeted by traffickers seeking to exploit children. Barring discrimination in child welfare services will ensure improved treatment and outcomes for LGBTQ foster children.

(b) **PURPOSE.**—It is the purpose of this Act to expand as well as clarify, confirm and create greater consistency in the protections and remedies against discrimination on the basis of all covered characteristics and to provide guidance and notice to individuals, organizations, corporations, and agencies regarding their obligations under the law.

### **SEC. 3. PUBLIC ACCOMMODATIONS.**

(a) **PROHIBITION ON DISCRIMINATION OR SEGREGATION IN PUBLIC ACCOMMODATIONS.**—Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

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

(2) in subsection (b)—

(A) in paragraph (3), by striking “stadium” and all that follows and inserting “stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display;”;

(B) by redesignating paragraph (4) as paragraph (6); and

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

“(4) any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services;

“(5) any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service; and”.

(b) **PROHIBITION ON DISCRIMINATION OR SEGREGATION UNDER LAW.**—Section 202 of such Act (42 U.S.C. 2000a–1) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin”.

(c) **RULE OF CONSTRUCTION.**—Title II of such Act (42 U.S.C. 2000a et seq.) is amended by adding at the end the following:

#### **“SEC. 208. RULE OF CONSTRUCTION.**

“A reference in this title to an establishment—

“(1) shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program; and

“(2) shall not be construed to be limited to a physical facility or place.”.

### **SEC. 4. DESEGREGATION OF PUBLIC FACILITIES.**

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

### **SEC. 5. DESEGREGATION OF PUBLIC EDUCATION.**

(a) **DEFINITIONS.**—Section 401(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000c(b)) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin”.

(b) **CIVIL ACTIONS BY THE ATTORNEY GENERAL.**—Section 407 of such Act (42 U.S.C. 2000c–6) is amended, in subsection (a)(2), by inserting “(including sexual orientation and gender identity),” before “or national origin”.

(c) **CLASSIFICATION AND ASSIGNMENT.**—Section 410 of such Act (42 U.S.C. 2000c–9) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin”.

### **SEC. 6. FEDERAL FUNDING.**

Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin,”.

### **SEC. 7. EMPLOYMENT.**

(a) **RULES OF CONSTRUCTION.**—Title VII of the Civil Rights Act of 1964 is amended by inserting after section 701 (42 U.S.C. 2000e) the following:

#### **“SEC. 701A. RULES OF CONSTRUCTION.**

“Section 1106 shall apply to this title except that for purposes of that application, a reference in that section to an ‘unlawful practice’ shall be considered to be a reference to an ‘unlawful employment practice’.”.

(b) **UNLAWFUL EMPLOYMENT PRACTICES.**—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended—

- (1) in the section header, by striking “SEX,” and inserting “SEX (INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY),”;
- (2) except in subsection (e), by striking “sex,” each place it appears and inserting “sex (including sexual orientation and gender identity),”; and
- (3) in subsection (e)(1), by striking “enterprise,” and inserting “enterprise, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.”.
- (c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3(b)) is amended—
  - (1) by striking “sex,” the first place it appears and inserting “sex (including sexual orientation and gender identity),”; and
  - (2) by striking “employment.” and inserting “employment, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.”.
- (d) CLAIMS.—Section 706(g)(2)(A) of the Civil Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”.
- (e) EMPLOYMENT BY FEDERAL GOVERNMENT.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—
  - (1) in subsection (a), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; and
  - (2) in subsection (c), by striking “sex” and inserting “sex (including sexual orientation and gender identity),”.
- (f) GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—The Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16a et seq.) is amended—
  - (1) in section 301(b), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; and
  - (2) in section 302(a)(1), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; and
  - (3) by adding at the end the following:

**“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.**

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this title except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex (including sexual orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability’.”.

(g) CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) is amended—

- (1) in section 201(a)(1) (2 U.S.C. 1311(a)(1)) by inserting “(including sexual orientation and gender identity),” before “or national origin,”; and
- (2) by adding at the end of title II (42 U.S.C. 1311 et seq.) the following:

**“SEC. 208. RULES OF CONSTRUCTION AND CLAIMS.**

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to section 201 (and remedial provisions of this Act related to section 201) except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex (including sexual orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex (including sexual orientation and gender identity), national origin, age, or disability’.”.

(h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter 23 of title 5, United States Code, is amended—

- (1) in section 2301(b)(2), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”;
- (2) in section 2302—
  - (A) in subsection (b)(1)(A), by inserting “(including sexual orientation and gender identity),” before “or national origin,”; and
  - (B) in subsection (d)(1), by inserting “(including sexual orientation and gender identity),” before “or national origin,”; and
- (3) by adding at the end the following:

**“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.**

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter (and remedial provisions of this title related to this chapter) except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex (including sexual orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex (including sexual orientation and gender identity), national origin, age, a handicapping condition, marital status, or political affiliation’.”.

**SEC. 8. INTERVENTION.**

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

**SEC. 9. MISCELLANEOUS.**

Title XI of the Civil Rights Act of 1964 is amended—

(1) by redesignating sections 1101 through 1104 (42 U.S.C. 2000h et seq.) and sections 1105 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections 1102 through 1105 and sections 1108 and 1109, respectively;

(2) by inserting after the title heading the following:

**“SEC. 1101. DEFINITIONS AND RULES.**

“(a) **DEFINITIONS.**—In titles II, III, IV, VI, VII, and IX (referred to individually in sections 1106 and 1107 as a ‘covered title’):

“(1) **RACE; COLOR; RELIGION; SEX; SEXUAL ORIENTATION; GENDER IDENTITY; NATIONAL ORIGIN.**—The term ‘race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), or ‘national origin’, used with respect to an individual, includes—

“(A) the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(B) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of the individual.

“(2) **GENDER IDENTITY.**—The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.

“(3) **INCLUDING.**—The term ‘including’ means including, but not limited to, consistent with the term’s standard meaning in Federal law.

“(4) **SEX.**—The term ‘sex’ includes—

“(A) a sex stereotype;

“(B) pregnancy, childbirth, or a related medical condition;

“(C) sexual orientation or gender identity; and

“(D) sex characteristics, including intersex traits.

“(5) **SEXUAL ORIENTATION.**—The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.

“(b) **RULES.**—In a covered title referred to in subsection (a)—

“(1) (with respect to sex) pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions; and

“(2) (with respect to gender identity) an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity.”; and

(3) by inserting after section 1105 the following:

**“SEC. 1106. RULES OF CONSTRUCTION.**

“(a) **SEX.**—Nothing in section 1101 or the provisions of a covered title incorporating a term defined or a rule specified in that section shall be construed—

“(1) to limit the protection against an unlawful practice on the basis of pregnancy, childbirth, or a related medical condition provided by section 701(k); or

“(2) to limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than that covered title, prohibiting a practice on the basis of sex.

“(b) **CLAIMS AND REMEDIES NOT PRECLUDED.**—Nothing in section 1101 or a covered title shall be construed to limit the claims or remedies available to any individual for an unlawful practice on the basis of race, color, religion, sex (including sexual orientation and gender identity), or national origin including claims brought pursuant to section 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or any other law, including a Federal law amended by the Equality Act, regulation, or policy.

“(c) **NO NEGATIVE INFERENCE.**—Nothing in section 1101 or a covered title shall be construed to support any inference that any Federal law prohibiting a practice on the basis of sex does not prohibit discrimination on the basis of pregnancy, childbirth, or a related medical condition, sexual orientation, gender identity, or a sex stereotype.

**“SEC. 1107. CLAIMS.**

“The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.”.

**SEC. 10. HOUSING.**

(a) FAIR HOUSING ACT.—The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended—

(1) in section 802 (42 U.S.C. 3602), by adding at the end the following:

“(p) ‘Gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(q) ‘Race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘handicap’, ‘familial status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of the individual.”;

(2) in section 804, by inserting “(including sexual orientation and gender identity),” after “sex,” each place that term appears;

(3) in section 805, by inserting “(including sexual orientation and gender identity),” after “sex,” each place that term appears;

(4) in section 806, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(5) in section 808(e)(6), by inserting “(including sexual orientation and gender identity),” after “sex,”; and

(6) by adding at the end the following:

**“SEC. 821. RULES OF CONSTRUCTION.**

“Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1101(b) or 1106 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.

**“SEC. 822. CLAIMS.**

“Section 1107 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1107 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.”.

(b) PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.—Section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended by inserting “(including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act)),” after “sex,” each place that term appears.

**SEC. 11. EQUAL CREDIT OPPORTUNITY.**

(a) PROHIBITED DISCRIMINATION.—Section 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)) is amended by inserting “(including sexual orientation and gender identity),” after “sex”.

(b) DEFINITIONS.—Section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended—

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

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

“(f) The terms ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(g) The term ‘race’, ‘color’, ‘religion’, ‘national origin’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘marital status’, or ‘age’, used with respect to an individual, includes—

“(1) the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of the individual.”; and

(3) by adding at the end the following:

“(j) Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application—

“(1) a reference in those sections to a ‘covered title’ shall be considered a reference to ‘this title’; and

“(2) paragraph (1) of such section 1101(b) shall apply with respect to all aspects of a credit transaction.”.

(c) **RELATION TO STATE LAWS.**—Section 705(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(a)) is amended by inserting “(including sexual orientation and gender identity),” after “sex”.

(d) **CIVIL LIABILITY.**—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

“(l) Section 1107 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application, a reference in that section to a ‘covered title’ shall be considered a reference to ‘this title’.”

**SEC. 12. JURIES.**

(a) **IN GENERAL.**—Chapter 121 of title 28, United States Code, is amended—

(1) in section 1862, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(2) in section 1867(e), in the second sentence, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(3) in section 1869—

(A) in subsection (j), by striking “and” at the end;

(B) in subsection (k), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(l) ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given such terms under section 1101(a) of the Civil Rights Act of 1964; and

“(m) ‘race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘economic status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of the individual.”; and

(4) by adding at the end the following:

**“§ 1879. Rules of construction and claims**

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter, except that for purposes of that application, a reference in those sections to a ‘covered title’ shall be considered a reference to ‘this chapter’.”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 121 of title 28, United States Code, is amended by adding at the end the following:

“1879. Rules of construction and claims.”.

## Purpose and Summary

H.R. 5, the “Equality Act,” ensures that federal law will explicitly and comprehensively prohibit discrimination on the basis of sexual orientation and gender identity to secure full integration of and equal opportunity for lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) persons in most key aspects of American life. It does this by codifying recent federal judicial and administrative decisions and by following the example of numerous states and localities that already provide explicit protections against such discrimination. Specifically, H.R. 5 amends Titles II (public accommodations), III (public facilities), IV (public education), VI (federally-funded programs), VII (employment), IX (intervention and removal of cases), and XI (miscellaneous provisions) of the Civil Rights Act of 1964 (“1964 Act”);<sup>1</sup> the Fair Housing Act;<sup>2</sup> the Equal Credit Opportunity Act;<sup>3</sup> and the nondiscrimination provisions of the statute governing jury selection<sup>4</sup> by either adding sex—including sexual orientation and gender identity—as a protected characteristic or, where sex is already included as a protected characteristic, by ex-

<sup>1</sup> 42 U.S.C. §§ 2000a–2000h–6 (2019).

<sup>2</sup> 42 U.S.C. §§ 3601–3619 & 3631 (2019).

<sup>3</sup> 15 U.S.C. §§ 1691 *et seq.* (2019).

<sup>4</sup> 28 U.S.C. §§ 1862, 1867, 1869 (2019).



plicitly clarifying that unlawful sex discrimination includes discrimination on the basis of sexual orientation or gender identity. It also expands the list of businesses and services that would be subject to the 1964 Act's public accommodations provisions and adds definitions of key terms and rules of construction clarifying that nothing in the bill undermines the rights of pregnant women or the rights of anyone to pursue claims for race, color, religion, sex (including sexual orientation and gender identity), or national origin discrimination under any other law. Finally, the bill contains a provision prohibiting the use of the Religious Freedom Restoration Act as a basis for a defense or claim in response to the enforcement of any of the civil rights statutes amended by H.R. 5.

H.R. 5 is supported by more than 360 civil rights, public interest, business, labor, and professional organizations, including the Human Rights Campaign, the National Women's Law Center, the NAACP, the National Urban League, the American Civil Liberties Union, the Sports and Fitness Industry Association, the National Alliance to End Sexual Violence, Lambda Legal, the American Medical Association, the National Association of Secondary School Principals, the AFL-CIO, AFSCME, the Business Roundtable, the National Association of Manufacturers, and the U.S. Chamber of Commerce.<sup>5</sup>

## Background and Need for the Legislation

### I. BACKGROUND

#### A. Federal Statutes and Executive Orders

There is no federal statute that provides explicit and comprehensive protection against discrimination on the basis of sexual orientation or gender identity, and no federal statute explicitly prohibits such discrimination in employment, housing, public accommodations, federally-funded programs, education, credit opportunity, or jury service. What federal statutory protections currently exist are limited. For example, the Violence Against Women Reauthorization Act of 2013<sup>6</sup> prohibits sexual orientation and gender identity discrimination in programs and activities funded by that Act. In addition, Executive Order 13087, issued by President Bill Clinton, prohibits sexual orientation discrimination in the federal civilian workforce<sup>7</sup> and Executive Order 13672, issued by President Barack Obama, prohibits gender identity discrimination in the federal civilian workforce and sexual orientation and gender identity discrimination in federal contracting.<sup>8</sup> Neither of these measures,

<sup>5</sup> See Human Rights Campaign, *Business Coalition for the Equality Act*, May 8, 2019, available at [http://assets2.hrc.org/files/assets/resources/Keep\\_Updated\\_-\\_Company\\_List\\_For\\_Website\\_-\\_Business\\_Coalition\\_for\\_Equality.pdf?ga=2.182789092.378477246.1557241778-403308507.1547139001](http://assets2.hrc.org/files/assets/resources/Keep_Updated_-_Company_List_For_Website_-_Business_Coalition_for_Equality.pdf?ga=2.182789092.378477246.1557241778-403308507.1547139001); Human Rights Campaign, *364 Organizations Endorsing the Equality Act*, April 25, 2019, available at [https://assets2.hrc.org/files/assets/resources/Orgs\\_Endorsing\\_EqualityAct.pdf?ga=2.177553511.378477246.1557241778-403308507.1547139001](https://assets2.hrc.org/files/assets/resources/Orgs_Endorsing_EqualityAct.pdf?ga=2.177553511.378477246.1557241778-403308507.1547139001); Human Rights Campaign, *Associations Endorsing the Equality Act*, Apr. 8, 2019, available at <https://assets2.hrc.org/files/assets/resources/Endorsing-associations-equality-act-3.13.19.pdf?ga=2.182446949.378477246.1557241778-403308507.1547139001>.

<sup>6</sup> Pub. L. No. 113-4, 127 Stat. 54 (2013), available at <https://www.govinfo.gov/content/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>.

<sup>7</sup> Exec. Order No. 13087 (May 28, 1998), available at <https://www.govinfo.gov/content/pkg/FR-1998-06-02/pdf/98-14689.pdf>.

<sup>8</sup> Exec. Order No. 13672 (July 21, 2014), available at <https://www.govinfo.gov/content/pkg/CFR-2015-title3-vol1/pdf/CFR-2015-title3-vol1-eo13672.pdf>.

however, fully addresses the problem of sexual orientation and gender identity discrimination.

*B. Developments in Federal Judicial and Administrative Decisions*

With respect to constitutional protections against discrimination on the basis of sexual orientation, the United States Supreme Court has issued several decisions that struck down state and federal laws differentiating between persons based on sexual orientation, finding that such laws were based on illegitimate animus and violated equal protection principles<sup>9</sup> or invaded privacy rights guaranteed by the Fourteenth Amendment.<sup>10</sup> Most recently, in *Obergefell v. Hodges*,<sup>11</sup> the Court invalidated state laws that only recognized marriage as being exclusively between a man and a woman as violations of the Fourteenth Amendment's Due Process and Equal Protection Clauses. Yet, despite this general long-term trend towards recognizing greater constitutional protections against sexual orientation discrimination, the Court has also identified limits to state public accommodation laws that seek to protect sexual minorities from discrimination when those laws were applied in a manner that was in tension with the First Amendment rights of religious or moral objectors.<sup>12</sup>

A number of federal court decisions have addressed the treatment of discrimination based on sexual orientation and gender identity under federal civil rights law, particularly in the employment context. In *Oncale v. Sundowner Offshore Services, Inc.*,<sup>13</sup> the Supreme Court recognized that a claim of same-sex sexual harassment was actionable as a sex discrimination claim under Title VII of the 1964 Act, which prohibits, in relevant part, employment discrimination based on sex.<sup>14</sup> The Court reasoned that, while Congress may not have envisioned same-sex sexual harassment when it passed Title VII, "statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."<sup>15</sup> Additionally, in *Price Waterhouse v. Hopkins*,<sup>16</sup> the Court held that discrimination on the basis of gender stereotypes could constitute a sex discrimination claim under Title VII.

<sup>9</sup>United States v. Windsor, 570 U.S. 744 (2013) (holding that section of the federal Defense of Marriage Act ("DOMA") defining "marriage" and "spouse" to be limited to opposite-sex unions violated equal protection and due process principles and concluding that DOMA served no legitimate purpose); Romer v. Evans, 517 U.S. 620 (1996) (striking down state constitutional amendment that banned all legal protections against anti-gay discrimination at the state and local level as a violation of the Fourteenth Amendment's Equal Protection Clause, reasoning that animus toward the gay community could not justify harmful governmental actions).

<sup>10</sup>Lawrence v. Texas, 539 U.S. 558 (2003) (holding that Texas statute banning same-sex sexual intercourse violated Fourteenth Amendment's privacy and equal protection guarantees).

<sup>11</sup>135 S. Ct. 2584 (2015).

<sup>12</sup>Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 138 S. Ct. 1719 (2018) (holding that state civil rights commission violated the First Amendment's Free Exercise Clause when it found that a baker who refused to make a wedding cake for a same-sex couple violated state antidiscrimination law because the Commission displayed a clear and impermissible hostility toward the sincere religious beliefs motivating the baker's objection); Boy Scouts of America v. Dale, 530 U.S. 640 (2000) (holding that the constitutional right to freedom of association permitted the Boy Scouts of America to exclude LGBT persons from membership notwithstanding state law prohibiting discrimination on the basis of sexual orientation in public accommodations).

<sup>13</sup>523 U.S. 75 (1998).

<sup>14</sup>42 U.S.C. § 2000e-2 (2019).

<sup>15</sup>*Oncale*, 523 U.S. at 79–80.

<sup>16</sup>490 U.S. 228 (1989).

In recent years, the United States Courts of Appeals for the Second and Seventh Circuits, both sitting en banc, as well as the Equal Employment Opportunity Commission (“EEOC”), have issued decisions explicitly holding that employment discrimination on the basis of sexual orientation constitutes unlawful sex discrimination in violation of Title VII, based in part on an extension of the reasoning in *Price Waterhouse and Oncale*.<sup>17</sup> In reaching this conclusion, they reasoned that sex is necessarily a factor in sexual orientation discrimination because one cannot fully define a person’s sexual orientation without consideration of the person’s sex and, as would be the case in any sex discrimination case, the person would not have been treated differently but for that person’s sex.<sup>18</sup> They also reasoned that sexual orientation discrimination is sex discrimination because it amounts to associational discrimination on the basis of sex, i.e., an employer unlawfully took an employee’s sex into account by treating the employee adversely for associating with a person of the same sex.<sup>19</sup> Finally, they concluded that sexual orientation discrimination could also amount to discrimination based on sex stereotypes, which, according to the *Price Waterhouse* decision, could amount to sex discrimination under Title VII.<sup>20</sup> Other circuit courts have come to the opposite conclusion, holding that Title VII does not protect against sexual orientation discrimination.<sup>21</sup>

With respect to whether discrimination on the basis of gender identity constitutes unlawful sex discrimination under Title VII, circuit courts have also come to differing conclusions. Adopting reasoning that was similar to that followed by the Second and Seventh Circuits and the EEOC concerning sexual orientation-based discrimination, the United States Court of Appeals for the Sixth Circuit, in its 2018 decision in *Equal Employment Opportunity Commission v. R.G. & G.R. Harris Funeral Homes, Inc.*,<sup>22</sup> held that Title VII prohibited discrimination on the basis of transgender or transitioning status as a form of sex discrimination, reasoning that such discrimination is necessarily motivated because of sex. It further reasoned that such discrimination would constitute discrimination on the basis of sex stereotypes, which would also violate Title VII’s prohibition on discrimination “because of” sex. Other circuits, however, have reached the opposite conclusion with regard to

<sup>17</sup> *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (en banc); *Hively v. Ivy Tech Comm. Coll.*, 853 F.3d 339 (7th Cir. 2017) (en banc); *Baldwin v. Foxx*, No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 15, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Wittmer v. Phillips 66 Co.*, 915 F.3d 328 (5th Cir. 2019) (reaffirming circuit precedent that expressly held that Title VII does not prohibit discrimination on the basis of sexual orientation); *Evans v. Georgia Regional Hospital*, 850 F.3d 1248 (11th Cir. 2017) (holding that plaintiff failed to state Title VII claim by alleging that she endured workplace discrimination because of her sexual orientation).

<sup>22</sup> 884 F.3d 560 (2018). See also *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (2017) (holding that transgendered student transitioning from female to male was likely to succeed on the merits of his claim that a local public school district’s unwritten policy prohibiting him from using boys’ restroom violated his rights under Title IX of the Education Amendments Act of 1972 and the Fourteenth Amendment’s Equal Protection Clause); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (2000) (reversing district court’s grant of defendant’s motion to dismiss for failure to state a claim where plaintiff, a biological male who sought and was denied a loan application from the defendant bank while dressed in traditionally feminine clothing, alleged that the bank violated the Equal Credit Opportunity Act’s prohibition on sex discrimination).

whether Title VII directly prohibits discrimination on the basis of a person's gender identity.<sup>23</sup>

Recently, the Supreme Court announced it would consider next term the questions of whether Title VII's prohibition on sex discrimination in employment includes discrimination based on sexual orientation and gender identity.<sup>24</sup> On the question of whether Title VII prohibits sexual orientation discrimination, the Court will consider an appeal of the Second Circuit's decision holding that it does as well as an Eleventh Circuit decision reaching the contrary conclusion.<sup>25</sup> On the question of whether Title VII covers gender identity discrimination, the Court will consider an appeal of the Sixth Circuit's decision in the *R.G. & G.R. Harris Funeral Homes* case.<sup>26</sup> Among other things, H.R. 5 codifies the holdings of the Second and Seventh Circuits finding that sexual orientation discrimination is sex discrimination under Title VII, and the analogous holding of the Sixth Circuit that gender identity discrimination is prohibited sex discrimination under Title VII.<sup>27</sup>

<sup>23</sup> See, e.g., *Etsitty v. Utah Transit Authority*, 502 F.3d 1215 (10th Cir. 2007) (holding that Title VII and the Equal Protection Clause do not recognize "transsexuals" as a protected class, but also declining to hold as a general matter that discrimination on the basis of gender identity could not constitute unlawful sex stereotyping under *Price Waterhouse*); *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984) (Title VII does not protect "transsexuals"); *Sommers v. Budget Marketing, Inc.*, 667 F.2d 748 (8th Cir. 1982) (same).

<sup>24</sup> Adam Liptak, *Supreme Court to Decide Whether Landmark Civil Rights Law Applies to Gay and Transgender Workers*, N.Y. TIMES, Apr. 22, 2019, available at <https://www.nytimes.com/2019/04/22/us/politics/supreme-court-gay-transgender-employees.html>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Some concerns have been raised regarding the potential application of H.R. 5 to other aspects of employment law. The following describes these concerns and how H.R. 5 does or does not address the particular question of law.

First, a concern has been raised about whether the definition of gender identity would require employers to identify individuals based on their appearance, mannerisms, or other gender-related characteristics. The definition of gender identity, contained in H.R. 5, is not meant to be construed in a manner that would require employers to identify, stereotype, or make assumptions about employees' or job applicants' gender identity. Rather the definition should be construed in a manner that allows an employee or job applicant to represent their gender identity to the employer, if necessary, in a manner that allows for a discussion without discrimination. Likewise, the definition of sexual orientation, contained in H.R. 5, is not meant to be construed in a manner that would require employers to identify, stereotype, or make assumptions about employees' or job applicants' sexual orientation. Rather the definition should be construed in a manner that allows an employee or job applicant to represent their sexual orientation to the employer, if necessary, without discrimination.

Second, a concern has been raised about whether the bill changes current law with respect to the provision of employer provided benefits. H.R. 5 should not be construed to prohibit a covered entity from enforcing any rules, policies, or agreements that are uniformly applied to all individuals regardless of actual or perceived sexual orientation or gender identity and that do not circumvent the purposes of this Act.

Third, a concern has been raised about whether the Equal Employment Opportunity Commission must collect information in the EEO-1 form related to sexual orientation and gender identity. In considering collection of such information, under H.R. 5, Congress suggests that the EEOC take due care of the sometimes private and personal nature of these characteristics. The EEOC should not solicit information in such a way that would require employers to assume an employees' or job applicants' sexual orientation or gender identity. Further, the EEOC should not require an employee or job applicant to disclose this information except on a voluntary basis. Any disclosure of information by employees or job applicants should be made in accordance with their gender identity.

Fourth, a concern has been raised about whether H.R. 5 changes current law with respect to the Pregnancy Discrimination Act. The underlying bill affirms that women affected by pregnancy should be treated the same for all employment-related purposes as other persons not so affected but similar in their ability or inability to work. H.R. 5 does nothing to expand or constrict current law.

Fifth, a concern has been raised about whether H.R. 5's amendments to current law related to "public accommodation" affect other employment-related statutes with "public accommodation" provisions. Changes to the definition of public accommodation in the underlying bill are contained solely within Section 201 of the 1964 Act. Courts should not construe these changes to affect other statutes or instances not included under Section 201 of the 1964 Act.

### C. State Laws

While there is no comprehensive federal statute explicitly prohibiting discrimination on the basis of sexual orientation or gender identity, there is a patchwork of *state* nondiscrimination protections that explicitly prohibit such kind of discrimination. Currently, 22 states prohibit sexual orientation-based discrimination in employment and housing, while another 21 states prohibit discrimination in public accommodations, 17 in education, 15 in terms of credit opportunities, and 10 in jury selection. With respect to prohibitions on discrimination on the basis of gender identity, 21 states expressly prohibit such discrimination in employment and housing, 20 in public accommodations, 15 in education and credit opportunities, and 6 in jury selection.<sup>28</sup>

This patchwork of state law protections against LGBTQ discrimination leaves many individuals without legal protection from such discrimination. A March 2019 study by The Williams Institute at the University of California, Los Angeles School of Law found that an estimated 4.1 million LGBTQ workers (aged 16 and older) lived in states without explicit LGBTQ nondiscrimination protections in employment.<sup>29</sup> Additionally, according to the study, 5.6 million LGBTQ adults (aged 18 and older) lived in states without explicit LGBTQ non-discrimination protections in housing, 6.9 million LGBTQ people (13 and older) lived in states without explicit LGBTQ non-discrimination protections in public accommodations, 2.1 million LGBTQ students (aged 15 and older) lived in states without explicit LGBTQ non-discrimination protections in education, and 8 million LGBTQ adults lived in states without LGBTQ non-discrimination protections in terms of credit opportunity.<sup>30</sup>

### D. Religious Exemptions to Generally Applicable Federal Nondiscrimination Laws

The First Amendment's Free Exercise Clause prohibits governmental interference with the free exercise of religion. In 1990, the Supreme Court narrowed the scope of the Free Exercise Clause's protections in a series of decisions, to which Congress responded by passing the Religious Freedom Restoration Act ("RFRA").<sup>31</sup> Until 1990, the Supreme Court applied strict scrutiny to any governmental action that imposed a burden on the free exercise of religion. Under strict scrutiny, a governmental burden on the free exercise of religion would be justified only if it served a compelling governmental interest and was the least restrictive means of serving that interest. In *Employment Division v. Smith*,<sup>32</sup> the Supreme Court diluted its strict scrutiny approach to governmental burdens on the free exercise of religion where the burden was incidental to a generally applicable law. In an effort to protect followers of minority religions, Congress passed RFRA to re-establish the pre-

<sup>28</sup> Sarah Warbelow, Cathryn Oakley & Collen Kutney, 2018 State Equality Index, Human Rights Campaign Foundation and Equality Federation Institute available at <https://assets2.hrc.org/files/assets/resources/SEI-2018-Report.pdf?ga=2.85439129.1252111100.1553270783-682024502.1549305648>.

<sup>29</sup> UCLA School of Law Williams Institute, *LGBT People in the U.S. Not Protected by State Nondiscrimination Statutes*, UCLA School of Law Williams Institute (Mar. 2019), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> 42 U.S.C. §§ 2000bb *et seq.* (2019).

<sup>32</sup> 494 U.S. 872 (1990).

*Smith* standard by subjecting generally applicable laws and other government actions that substantially burden the free exercise of religion to strict scrutiny.<sup>33</sup>

While the Supreme Court in *Employment Division* held that incidental burdens on religious belief, alone, would be insufficient to justify an exemption from otherwise valid and generally applicable laws, it has also clarified, most recently in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, that government actions, including the enforcement of civil rights laws, that are motivated by animus towards a particular religious group would violate the Free Exercise Clause.<sup>34</sup> Additionally, the First Amendment protects freedom of association, which provides additional constitutional protection for houses of worship and other religious entities with respect to the application of nondiscrimination laws.

The potential for RFRA to be used to justify broad exemptions to generally applicable nondiscrimination laws has grown considerably in recent years. For instance, in the *R.G. & G.R. Harris Funeral Homes* decision from the Sixth Circuit discussed earlier, the lower court had ruled in favor of the defendant funeral home, finding that RFRA could be invoked as a defense to a Title VII sex discrimination claim.<sup>35</sup> Indeed, Justice Ruth Bader Ginsburg suggested with alarm in her dissent in *Burwell v. Hobby Lobby* that the Court's decision allowing a closely-held for-profit corporation to obtain an exemption from a generally applicable law under RFRA based on the owners' religious beliefs could lead to that Act being used to permit discrimination against minority groups,<sup>36</sup> and the district court in the *R.G. & G.R. Harris* case cited *Hobby Lobby* in its RFRA analysis.<sup>37</sup>

In another recent example of RFRA's expansive application to nondiscrimination laws, the Trump Administration earlier this year cited RFRA in exempting federally-funded foster care and adoption agencies in South Carolina from the religious nondiscrimination protections<sup>38</sup> provided by a Department of Health and Human Services regulation.<sup>39</sup> This waiver allowed an evangelical Christian foster placement agency that received public funding to potentially discriminate against LGBTQ and non-Christian families based on the agency's religious beliefs in making a foster placement decision.<sup>40</sup>

In addition to constitutional and statutory protections for religious free exercise and freedom of association, several exemptions in civil rights statutes provide further protection for religious entities in certain circumstances. For instance, Title II of the 1964 Act, which covers public accommodations, contains an exemption for private clubs and other establishments that are not open to the

<sup>33</sup> See S. Rept. No. 103-111, at 12 (1993) (RFRA's purpose was "only to overturn the Supreme Court's decision in *Smith*," not to "unsettle other areas of law").

<sup>34</sup> *Masterpiece Cakeshop*, 138 S. Ct. at 1727.

<sup>35</sup> *R.G. & G.R. Harris Funeral Homes*, 884 F.3d at 570.

<sup>36</sup> 573 U.S. 682, 769-70 (2014).

<sup>37</sup> *EEOC v. R.G. & G. R. Harris Funeral Homes*, 201 F.Supp.3d 837, 863 (E.D. Mich. 2016).

<sup>38</sup> Letter from Steve Wagner, Principal Deputy Assistant Secretary, Administration for Children and Families, Dep't of Health and Human Servs., to Henry McMaster, Governor, State of South Carolina (Jan. 23, 2019), available at <https://governor.sc.gov/sites/default/files/Documents/newsroom/HHS%20Response%20Letter%20to%20McMaster.pdf>.

<sup>39</sup> 45 C.F.R. 75.300(c) (2019).

<sup>40</sup> Associated Press, *S.C. Group Can Reject Gays and Jews As Foster Parents, Trump Admin. Says*, Jan. 24, 2019, available at <https://www.nbcnews.com/feature/nbc-out/s-c-group-can-reject-gays-jews-foster-parents-trump-n962306>.

general public, and H.R. 5 does not amend this exemption in any way.<sup>41</sup> With respect to houses of worship, it is clear that when houses of worship provide spaces and services to congregants and worshippers, and not to the public at large, they are not acting as places of public accommodation. This has been the case in the more than five decades that this exemption has been in effect. Moreover, clergy operating in their ministerial capacity would never be compelled to perform a religious ceremony in conflict with their religious beliefs, even when working in a place of public accommodation.

Title VII of the 1964 Act contains an explicit exemption for religious organizations from its general prohibition on employment discrimination. This exemption allows religious corporations, associations, and societies to limit employment to members of their own faith. The exemption also extends to schools, colleges, and universities owned, supported, controlled, or managed by a religious organization. Also, courts and the EEOC have recognized that Title VII requires that employers provide accommodation for an employee's sincerely-held religious beliefs and practices where the requested accommodation does not impose an undue hardship for the employer. Examples of such accommodations include allowing the wearing of head coverings that conflict with workplace dress codes, prayer breaks, and schedule changes to accommodate religious observances.

Additionally, the Supreme Court has recognized a “ministerial exception” with respect to the employment practices of religious organizations.<sup>42</sup> Under this exception, rooted in the First Amendment, religious employers are exempt from nondiscrimination laws to the extent that an employment practice concerns employees who play roles with respect to the teaching or inculcating of faith.<sup>43</sup> This exception applies broadly to include not only those employees who hold formal ministerial positions, but can also include any employee who organizes religious services, theology professors, and church music directors. It would not, however, apply with respect to employees serving in purely administrative, custodial, or janitorial roles.

Title VI of the 1964 Act, which prohibits discrimination in federally-funded programs, does not prohibit discrimination on the basis of religion. Therefore, religious entities are free to discriminate on the basis of religion when making decisions regarding employment or who may receive services from these programs and are free to determine who is and is not a member of their respective faiths.<sup>44</sup>

<sup>41</sup> 42 U.S.C. 2000a(e) (2019).

<sup>42</sup> *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012).

<sup>43</sup> *Id.*

<sup>44</sup> Courts historically have interpreted the scope of protection available under Title VI to be coextensive with that afforded by the Equal Protection Clause. In adding sex as a protected characteristic under Title VI, Congress intends for courts to extend that approach, continuing to apply strict scrutiny with respect to classifications based on race, color, or national origin, and intermediate scrutiny to those based on sex, as would be the case under the Equal Protection Clause. Additionally, courts should *not* draw any inference from H.R. 5's amendment of Title VI in some ways and not in others to mean that Congress implicitly endorses any particular judicial interpretations regarding any other aspect of Title VI.

The Committee acknowledges that the addition of sex as a protected characteristic under Title VI may raise some questions about how the revised Title VI should be read in relation to Title IX of the Education Amendments Act of 1972. It is the Committee's intention not to alter in any way Title IX or the scope or availability of its exemptions as they currently stand. Rather, Title IX and the revised Title VI should be read as being complementary provisions that provide

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Beyond the 1964 Act, the Fair Housing Act also specifically exempts those religious organizations that provide preferences to members of their own religion from its nondiscrimination provisions.<sup>45</sup> That exemption, however, is not available to a religious organization that discriminates in its membership based on race, color, or national origin.<sup>46</sup>

## II. NEED FOR THE LEGISLATION

While federal statutes, state laws, court decisions, and agency interpretations provide some measure of protection against discrimination on the basis of sexual orientation and gender identity, such protections are incomplete and leave many LGBTQ Americans vulnerable to discrimination. Moreover, despite polling showing that society has become increasingly more accepting of LGBTQ people in recent years,<sup>47</sup> these individuals continue to face numerous forms of discrimination because of their sexual orientation or gender identity in many areas. Comprehensive, consistent, and explicit federal nondiscrimination protections, therefore, are necessary to ensure that LGBTQ people are fully protected from invidious discrimination and integrated into all aspects of American life.

In addition, women also continue to face discrimination in public accommodations and federally-funded programs with less-than-complete protection under federal law. Adding sex as a protected characteristic to those nondiscrimination laws dealing with public accommodations and federally-funded programs would provide important additional protections for women who experience discrimination in these areas. African Americans and other racial minorities also have less-than-full protection from racial discrimination in the provision of public spaces and services such as those provided by retail or online businesses, a situation that the Equality Act will remedy.

The Reverend Dr. Dennis Wiley, Pastor Emeritus of Covenant Baptist United Church of Christ in Washington, D.C., in his testimony in support of H.R. 5 at the Committee’s hearing on this legislation, emphasized the moral imperative of opposing ongoing discrimination, citing his own experiences of racial discrimination while growing up in the Jim Crow-era South and how that experience of discrimination sensitized him to all forms of discrimina-

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overlapping protection against sex discrimination. Indeed, the addition of sex as a protected characteristic under Title VI should be read in light of the way that courts and enforcement agencies have interpreted other legal prohibitions against sex discrimination, including analogous constitutional and statutory provisions, so as to permit gender-specific programming and facilities when they are justified. For example, in *United States v. Virginia Military Institute*, 518 U.S. 515 (1996), the Supreme Court acknowledged that, while single-sex education may violate the Equal Protection Clause in the absence of a sufficient justification, single-sex education can also provide benefits to some students, particularly where such education serves to remedy past discrimination, and that other sex-specific distinctions may be permissible.

Also, while H.R. 5 does not amend Title IX to explicitly include sexual orientation and gender identity as protected characteristics, it expressly prohibits, in new proposed section 1106(c) of the 1964 Act that would be added by H.R. 5, the drawing of “any inference [based on the changes to current law made by H.R. 5] that any Federal law prohibiting a practice on the basis of sex does not prohibit discrimination on the basis of . . . sexual orientation, gender identity, or a sex stereotype.”

<sup>45</sup> 42 U.S.C. § 3607(a) (2019).

<sup>46</sup> *Id.*

<sup>47</sup> Gallup, *Gay and Lesbian Rights* (2018), available at <https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx>.



tion.<sup>48</sup> He also testified about his daughter coming out as a lesbian and how that only strengthened his already-strong commitment to equality for LGBTQ persons.<sup>49</sup>

#### A. Employment

Anti-LGBTQ employment discrimination can take many forms, including failing to hire a job applicant, firing or refusing to promote an employee, or mistreating employees because of their gender identity or sexual orientation. These forms of discrimination can also significantly affect LGBTQ people's income, having a wide-ranging impact on their lives.

A 2013 Pew Research Center poll found that 21% of LGBTQ respondents reported being treated unfairly by an employer because of their gender identity or sexual orientation at one point in their lifetimes, with 5% of all respondents reporting that they experienced this form of discrimination in the past year.<sup>50</sup> In a 2017 National Public Radio ("NPR"), Robert Wood Johnson Foundation, and Harvard survey ("NPR Survey"), 20% of LGBTQ respondents reported being discriminated against because of their gender identity or sexual orientation when applying for jobs and 22% reported discrimination in terms of unequal pay or when being considered for promotion.<sup>51</sup> A 2016 survey by Prudential Financial also found that sexual orientation impacts income; both gay men and lesbian women earned, on average, less than their heterosexual counterparts.<sup>52</sup>

Moreover, the 2015 U.S. Transgender Survey—the largest survey of transgender people in the United States—found that 30% of respondents who had been employed in the past year had been fired, denied a promotion, or experienced mistreatment in the workplace because of their gender identity or expression. Additionally, 29% of respondents reported incomes that fell below 125% of the official poverty line.<sup>53</sup>

Behind these statistics are people with stories of discrimination. For example, a teacher in Texas was put on paid administrative leave after showing the class a photo of her and her now-wife, as well as mentioning that the artist Jasper Johns had a same-sex partner.<sup>54</sup> In Michigan, a transgender woman who worked at a fu-

<sup>48</sup> *Equality Act, Hearing on H.R. 5 Before the H. Comm. on the Judiciary*, 116th Cong. (2019) [hereinafter "Equality Act Hearing"] (statement of the Rev. Dr. Dennis Wiley, Pastor Emeritus, Covenant Baptist United Church of Christ).

<sup>49</sup> *Id.*

<sup>50</sup> Pew Research Center, *A Survey of LGBT Americans Chapter 2: Social Acceptance*, June 13, 2013, available at <https://www.pewsocialtrends.org/2013/06/13/chapter-2-social-acceptance/> [hereinafter "Pew Research Center"].

<sup>51</sup> Nat'l Public Radio, the Robert Wood Johnson Foundation, & Harvard T.H. Chan School of Public Health, *Discrimination in America: Experiences And Views Of LGBTQ Americans*, Nov. 2017, available at <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2017/11/NPR-RWJF-HSPH-Discrimination-LGBTQ-Final-Report.pdf> [hereinafter "NPR Survey"].

<sup>52</sup> Prudential Financial, *The LGBT Financial Experience 2016-2017*, June 2017, available at <http://corporate.prudential.com/media/managed/PrudentialLGBT2016-2017.pdf>. The number of transgender respondents was too small in this study to draw statistical conclusions.

<sup>53</sup> Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, & Ma'ayan Anafi, *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> [hereinafter "Transgender Survey"].

<sup>54</sup> Emma Platoff, *A Gay Texas Teacher is on Leave after She Showed Students a Photo of Her Wife. She Has Few Legal Protections*, TEXAS TRIB., May 24, 2018, available at <https://www.texastribune.org/2018/05/24/mansfield-isd-texas-art-teacher-LGBTQ-few-legal-protections/>.

neral home was fired two weeks after coming out to her employer.<sup>55</sup>

During the hearing, Majority witness Carter Brown, who lives in a state without explicit LGBTQ nondiscrimination protections, shared his experience of how his life changed after he was outed as a transgender man at his job. Prior to being outed, he earned three promotions in two years. Nevertheless, after a coworker outed him, he was the target of gossip and harassment and was eventually fired.<sup>56</sup> As a result, he was forced to cash out his 401K and defer auto loans and mortgage payments to stay financially afloat.<sup>57</sup> He also lost his health insurance.<sup>58</sup> Mr. Brown explained that he supported H.R. 5 because, as a transgender black man who has experienced workplace discrimination, H.R. 5 would have protected him.<sup>59</sup> In addition, he testified that the bill's expanded definition of public accommodations would protect him not only as a transgender man but as a person of color.<sup>60</sup>

### *B. Housing*

Housing is another area where LGBTQ people face discrimination because of their sexual orientation or gender identity. A 2011 federal study by the Department of Housing and Urban Development found that same-sex couples received fewer responses to e-mail inquiries about nbhousing opportunities than opposite-sex couples in metropolitan areas.<sup>61</sup> Additionally, 23% of respondents in the 2015 U.S. Transgender Survey reported experiencing some form of housing discrimination in just the past year<sup>62</sup> and 22% of LGBTQ respondents in the NPR Survey reported experiencing discrimination in housing.<sup>63</sup> These forms of discrimination can impact people at all ages. For example, in Missouri, a lesbian couple that was in a committed relationship for four decades, was rejected from a retirement home they applied to join because they were in a same-sex relationship.<sup>64</sup>

### *C. Public Accommodations*

The Pew Research Center poll found that 23% of respondents reported receiving poor service in a restaurant, hotel, or other place of business open to the public because of their gender identity or sexual orientation.<sup>65</sup> The 2015 U.S. Transgender survey found that 31% of respondents who visited a place of public accommodation where the staff or employees thought or knew they were transgender experienced at least one type of mistreatment, with

<sup>55</sup> Adam Liptak, *Can a Fired Transgender Worker Sue for Job Discrimination?*, N.Y. Times (November 12, 2018), available at <https://www.nytimes.com/2018/11/12/us/politics/transgender-job-discrimination.html>.

<sup>56</sup> Equality Act Hearing (statement of Carter Brown).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Samantha Friedman, Angela Reynolds, Susan Scovill, Florence R. Brassier, Ron Campbell, and McKenzie Ballou, *An Estimate Of Housing Discrimination Against Same-Sex Couples*, U.S. Department of Housing and Urban Development Office of Policy Development and Research (June 2013) available at [https://www.huduser.gov/portal/Publications/pdf/Hsg\\_Disc\\_against\\_SameSexCpls\\_v3.pdf](https://www.huduser.gov/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf).

<sup>62</sup> Transgender Survey.

<sup>63</sup> NPR Survey.

<sup>64</sup> Tim Fitzsimons, *Judge Rules Against Lesbians Rejected From Retirement Home*, NBC News (January 18, 2019) available at <https://www.nbcnews.com/feature/nbc-out/judge-rules-against-elderly-lesbians-rejected-retirement-home-n960211>.

<sup>65</sup> Pew Research Center.

14% of respondents reporting that they had been denied equal treatment or service.<sup>66</sup>

Sometimes, denial of equal treatment or service can include being completely denied service. For example, in Indiana earlier this year, a same-sex couple was refused service at a tax service company because they were in a same-sex marriage.<sup>67</sup> Similarly, last year in Arizona, a pharmacist refused to fill a prescription for hormone therapy for a transgender woman.<sup>68</sup>

During the hearing, Jami Contreras, a Majority witness, shared the story of her six-year-old daughter being denied medical services as a newborn by a pediatrician. Contreras explained that when she and her wife decided to start a family they moved 230 miles to the Metro Detroit area to help ensure that their children would grow up in a community free from discrimination.<sup>69</sup> She explained that she and her wife interviewed a number of pediatricians and found one who met their requirements and did not seem concerned that they were a same-sex married couple, but that when they arrived for their baby's appointment, a different doctor appeared and that when questioned, the doctor explained that the Contreras' hand-picked pediatrician had "prayed on it" and decided she could not take on their daughter as a patient.<sup>70</sup> She testified that she had continuing concerns that her daughter would experience additional discrimination and that Congress should pass H.R. 5 to prevent such discrimination in the future.<sup>71</sup>

LGBTQ people are not the only individuals who experience discrimination in public accommodations with no federal legal recourse. For instance, women are often charged more for goods and services marketed towards them than men are for nearly identical goods and services marketed towards them.<sup>72</sup> A Study of Gender Pricing in New York City by the New York City Department of Consumer Affairs found that women's products cost 7% more than similar products for men and that women's products cost more 42% of the time while men's products cost more 18% of the time.<sup>73</sup>

Moreover, current federal antidiscrimination law does not cover all of the public spaces and services where people may face discrimination, such as retail stores, online businesses, homeless shelters, banks, and providers of health care, accounting, legal, and transportation services. For instance, in the past year, there have been notable examples of racial discrimination and profiling in retail stores, including an instance where a Nordstrom Rack employee called the police to investigate African-American teenagers

<sup>66</sup>Transgender Survey.

<sup>67</sup>Vic Ryckaert, *An Indiana Tax Service Turned Away a Gay Couple. Both Sides Claim Discrimination*, INDIANAPOLIS STAR, Feb. 18, 2019, available at <https://www.indystar.com/story/news/2019/02/18/rfra-same-sex-marriage-indiana-discrimination-russiaville-mike-pence/2903487002/>.

<sup>68</sup>Julia Jacobs, *Transgender Woman Says CVS Pharmacist Refused to Fill Hormone Prescription*, N.Y. TIMES, July 20, 2018, available at <https://www.nytimes.com/2018/07/20/us/cvs-pharmacy-transgender-woman-nyt.html>.

<sup>69</sup>Equality Act Hearing (statement of Jami Contreras).

<sup>70</sup>*Id.*

<sup>71</sup>*Id.*

<sup>72</sup>Democratic staff of the Joint Economic Committee, *The Pink Tax How Gender-Based Pricing Hurts Women's Buying Power*, United States Congress Joint Economic Committee (Dec. 2016) available at [https://www.jec.senate.gov/public/\\_cache/files/8a42df04-8b6d-4949-b20b-6f40a326db9e/the-pink-tax-how-gender-based-pricing-hurts-women-s-buying-power.pdf](https://www.jec.senate.gov/public/_cache/files/8a42df04-8b6d-4949-b20b-6f40a326db9e/the-pink-tax-how-gender-based-pricing-hurts-women-s-buying-power.pdf).

<sup>73</sup>Anna Bessendorf, *From Cradle to Cane: The Cost of Being a Female Consumer: A Study of Gender Pricing in New York City*, New York City Department of Consumer Affairs (Dec. 2015) available at <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Study-of-Gender-Pricing-in-NYC.pdf>.

who were shopping for prom outfits after wrongly suspecting them of shoplifting.<sup>74</sup>

#### D. Education

More than six in ten LGBTQ students in the GLSEN 2017 National School Climate Survey reported that they had experienced anti-LGBTQ discriminatory policies and practices in school. Moreover, nearly half of transgender and gender nonconforming students in the survey reported being prevented from using their chosen name or pronoun and a quarter reported being prevented from wearing clothing that matched their gender identity or expression.<sup>75</sup>

One notable example of anti-transgender discrimination in education is the experience of Gavin Grimm, a transgender boy who was denied access to facilities that aligned with his gender identity in his Virginia high school.<sup>76</sup> Grimm sued his school and his case was almost considered by the Supreme Court. The Supreme Court, however, sent the case back to the lower courts to be reconsidered after the Trump Administration rescinded Department of Education guidance on the rights of transgender students.<sup>77</sup>

#### E. Federally-funded programs

Discrimination in federally-funded programs can take many forms. For example, in prisons receiving federal financial assistance, discrimination against the LGBTQ community can include failure to provide necessary medications, unsafe housing assignments, and disproportionate use of solitary confinement.<sup>78</sup> This can also include mistreatment by local and state law enforcement agencies receiving federal funds, with 26% of respondents in the NPR Survey, for instance, stating that they have been treated unfairly by the police because they are LGBTQ.<sup>79</sup>

In federally-funded homeless shelters, discrimination can include unsafe housing assignments and even denying entry to LGBTQ people. The 2015 U.S. Transgender Survey found that 70% of respondents who stayed in a shelter in the past year reported some

<sup>74</sup> Rachel Siegel, *Nordstrom Rack Apologizes After Calling The Police on Three Black Teens who were Shopping for Prom*, WASH. POST, May 9, 2018, available at [https://www.washingtonpost.com/news/business/wp/2018/05/08/nordstrom-rack-called-the-police-on-three-black-teens-who-were-shopping-for-prom/?utm\\_term=.6627c82186fa](https://www.washingtonpost.com/news/business/wp/2018/05/08/nordstrom-rack-called-the-police-on-three-black-teens-who-were-shopping-for-prom/?utm_term=.6627c82186fa).

<sup>75</sup> Joseph G. Kosciw, Emily A. Greytak, Adrian D. Zongrone, Caitlin M. Clark, & Nhan L. Truong, *The 2017 National School Climate Survey The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, GLSEN (2018) available at <https://www.glsen.org/sites/default/files/GLSEN%202017%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>.

<sup>76</sup> Matt Stevens, *Transgender Student in Bathroom Dispute Wins Court Ruling*, N.Y. TIMES, May 22, 2018, available at <https://www.nytimes.com/2018/05/22/us/gavin-grimm-transgender-bathrooms.html>.

<sup>77</sup> American Civil Liberties Union, *G.G. V. Gloucester County School Board*, (updated Feb. 25, 2019), available at <https://www.aclu.org/cases/gg-v-gloucester-county-school-board>. Many states and localities have enacted nondiscrimination measures to protect against gender identity-based discrimination. As both Professor Kenji Yoshino and Sunu Chandu of the National Women's Law Center testified at the Committee hearing on H.R. 5, the experience of these states and localities—some of which have had such kinds of protections in places for decades—demonstrates that protecting against gender identity discrimination has in no way resulted in a “parade of horrors,” including any sort of increase in assault, sex crimes, or voyeurism targeting women in locker rooms, restrooms, and other shared spaces. Equality Act Hearing (statements of Sunu Chandu, Legal Director, National Women's Law Center and Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law, New York University School of Law).

<sup>78</sup> Lambda Legal, *Protected and Served? Jails and Prisons*, Lambda Legal (2015) available at <https://www.lambdalegal.org/protected-and-served/jails-and-prisons>.

<sup>79</sup> NPR Survey.

form of mistreatment, including being harassed, assaulted, or ejected from the shelter because they were transgender.<sup>80</sup>

#### *F. Credit*

Discrimination in access to credit can adversely impact many aspects of a person's life, from getting a car to buying a house. For example, a study of Home Mortgage Disclosure Act data showed that same-sex pairs of borrowers were denied mortgages at higher rates than different-sex pairs in which a man was the primary applicant (though male same-sex pairs were denied at about the same rate as different-sex pairs where a woman was the primary applicant).<sup>81</sup>

#### *G. The judicial system*

Given that LGBTQ people are overrepresented in the criminal justice system, mistreatment in the courts exacerbates this problem. In the NPR survey, 24% of respondents stated that they have been treated unfairly by the courts because they are LGBTQ.<sup>82</sup> In a Lambda Legal survey, 19% of respondents who interacted with a court heard discriminatory comments about sexual orientation or gender identity and expression in the courts.<sup>83</sup> While prohibiting LGBTQ discrimination in jury service will not completely eliminate these biases, this prohibition will help ensure that cases with LGBTQ defendants are truly heard by a jury of their peers that would include a full cross-section of their communities.

#### *H. RFRA exception and nondiscrimination laws*

Constitutional protections for the free exercise of religion and the various religious exemptions under current civil rights statutes properly balance individuals' ability to freely exercise their religion on the one hand, with the government's compelling interest in eradicating discrimination on the other. Any attempt to include new religious exemptions or to expand upon existing ones in the underlying civil rights statutes that H.R. 5 amends would upset this careful balance and erode our nation's civil rights laws and nondiscrimination protections for all people. Yet, as outlined above, through a series of misguided interpretations of RFRA, courts and the Executive Branch have threatened to do just that.

The bill's provision prohibiting the use of RFRA as the basis of a defense or claim to any enforcement of any of the civil rights provisions amended by H.R. 5 reflects Congress's longstanding view that, while the right of Americans, and particularly of religious minorities, to freely exercise their religions should be protected, religious belief should not be the basis for broad exemptions from generally applicable anti-discrimination laws. In other words, Congress intended RFRA to be a "shield" for religious minorities, not a "sword" that would permit businesses and others to harm minorities. As Professor Kenji Yoshino of New York University School of

<sup>80</sup> Transgender Survey.

<sup>81</sup> Mark Fogarty, *HMDA Data Offers Clues on Discrimination Against Gays*, Am. Banker (June 9, 2014) available at <https://www.americanbanker.com/news/hmda-data-offers-clues-on-discrimination-against-gays>. The study examined the treatment of same-sex pairs of borrowers, which may not necessarily consist solely of LGBTQ partners (two male relatives, for example, may also be encompassed in the study.)

<sup>82</sup> NPR Survey *supra*.

<sup>83</sup> Lambda Legal, *Protected and Served? Courts*, Lambda Legal (2015) available at <https://www.lambdalegal.org/protected-and-served/courts>.

Law testified at the Committee’s hearing on H.R. 5, “Civil rights statutes safeguarding vulnerable groups have never included an unlimited license to refuse compliance on religious grounds.”<sup>84</sup> He noted that the Supreme Court expressly rejected such an argument in an early challenge to the 1964 Act by a business owner who refused to serve African American customers on religious grounds.<sup>85</sup> H.R. 5’s RFRA-related provision simply reaffirms that longstanding principle, articulated more than 50 years ago.

### *I. Public and business support for Equality Act*

There is strong bipartisan public support for LGBTQ nondiscrimination protections and majority support for such protections among every major religious denomination, yet Congress has thus far failed to act on this public support. According to the Public Religion Research Institute’s (“PRRI’s”) 2017 American Values Atlas, 70% of Americans favor nondiscrimination protections for LGBTQ people in employment, housing, and public accommodations, including 35% who strongly support them.<sup>86</sup> Supporters of LGBTQ nondiscrimination protections included 79% of Democrats, 72% of Independents, and 58% of Republicans.<sup>87</sup> Similarly, a poll conducted by Greenberg Quinlan Rosner Research and commissioned by the Human Rights Campaign found that 65% of 2018 voters in battleground districts supported the Equality Act.<sup>88</sup>

Moreover, there is substantial support for LGBTQ nondiscrimination protections across geographic, racial, and religious lines. The PRRI poll found that majorities of residents in all 50 states favored LGBTQ nondiscrimination protections and that 75% of Asian-Pacific Islander Americans, 71% of White Americans, 69% of Hispanic Americans, and 66% of African Americans favored such nondiscrimination protections.<sup>89</sup> In addition, the majority of followers of each religious group that was polled expressed support for these protections, including Unitarian Universalists (95%), Jews (80%), Buddhists (78%), Hindus (75%), Catholics (74%), white mainline Protestants (71%), Hispanic Catholics (70%), Orthodox Christians (69%), Mormons (69%), black Protestants (65%), Hispanic Protestants (59%), white evangelical Protestants (54%), and Jehovah’s Witnesses (50%).<sup>90</sup> Additionally, 79% of religiously unaffiliated Americans support nondiscrimination protections for LGBTQ people.<sup>91</sup>

<sup>84</sup> Equality Act Hearing (statement of Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law, New York University School of Law).

<sup>85</sup> *Id.*; *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968); see also *Masterpiece Cakeshop*, 138 S. Ct. at 1727 (noting that exemptions from civil rights statutes must be confined or else “a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with . . . civil rights laws.”).

<sup>86</sup> Alex Vandermaas-Peeler, Daniel Cox, Molly Fisch-Friedman, Rob Griffin, & Robert P. Jones, *Emerging Consensus on LGBT Issues: Findings From the 2017 American Values Atlas*, Public Religion Research Institute (May 1, 2018) available at <https://www.prri.org/research/emerging-consensus-on-lgbt-issues-findings-from-the-2017-american-values-atlas/>.

<sup>87</sup> *Id.*

<sup>88</sup> Greenberg Quinlan Rosner Research & Human Rights Campaign, *People Who Were Pushed Down Push Back Post-Election Survey and Election Result Analysis*, Human Rights Campaign (Nov. 7, 2018) available at [https://assets2.hrc.org/files/assets/resources/HRC\\_2018\\_Post\\_Election\\_Polling.pdf?\\_ga=2.253357769.1387538649.1551969720-682024502.1549305648](https://assets2.hrc.org/files/assets/resources/HRC_2018_Post_Election_Polling.pdf?_ga=2.253357769.1387538649.1551969720-682024502.1549305648).

<sup>89</sup> Vandermaas-Peeler *et al.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

In addition to general public support, the business community also strongly supports the Equality Act. For instance, as of this writing, more than 200 companies have endorsed the Equality Act and are members of the Business Coalition for the Equality Act.<sup>92</sup> These companies have operations in all 50 states, maintain headquarters in 29 states, have a combined total revenue of \$4.5 trillion, and employ more than 10.4 million people in the United States.<sup>93</sup>

During the Committee’s hearing on H.R. 5, Tia Silas, Vice President and Global Chief Diversity and Inclusion Officer for IBM, explained IBM’s support for the bill and outlined IBM’s history of having LGBTQ-inclusive policies.<sup>94</sup> She stressed that diversity “ensures differentiated innovation,” that in order for IBM to succeed it needs to retain the best talent, and that discriminating against people based on their identity is bad for business.<sup>95</sup> She emphasized that the lack of affirmative nondiscrimination protections can lead employees to feel stress, impact their productivity, and limit where they can safely live and work.<sup>96</sup> She also testified that businesses are not only concerned about nondiscrimination protections in employment, but also in other key areas of life—like housing and credit—which can impact where employees can travel and relocate to and thrive.<sup>97</sup> She also noted the widespread business support for the bill, including from the Business Roundtable’s member companies.<sup>98</sup>

### Hearings

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to consider H.R. 5: Hearing on “H.R. 5, the ‘Equality Act,’” held before the full Committee on April 2, 2019. The witnesses were Sunu Chandy, Legal Director, National Women’s Law Center; Rev. Dr. Dennis Wiley, Pastor Emeritus, Covenant Baptist United Church of Christ; Carter Brown, a transgender discrimination victim; Tia Silas, Vice President and Chief Diversity and Inclusion Officer, IBM; Jami Contreras, a victim of sexual orientation discrimination; Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law, New York University School of Law; Doriane Lambelet Coleman, Professor of Law, Duke Law School; and Julia Beck, Women’s Liberation Front. While the Minority witnesses expressed concern about the potential effect of H.R. 5 on single-sex programs and facilities, the Majority witnesses strongly supported the legislation and explained the vast extent of the continuing discrimination faced by LGBTQ persons, women, and racial minorities in public accommodations, employment, the provision of health care services, and other areas and outlining the limited scope and reach of pro-

<sup>92</sup> Human Rights Campaign, *Business Coalition for the Equality Act*, May 8, 2019, available at [http://assets2.hrc.org/files/assets/resources/Keep\\_Updated\\_-\\_Company\\_List\\_For\\_Website\\_-\\_Business\\_Coalition\\_for\\_Equality.pdf?\\_ga=2.144860787.638557940.1557375134-916488279.1557375134](http://assets2.hrc.org/files/assets/resources/Keep_Updated_-_Company_List_For_Website_-_Business_Coalition_for_Equality.pdf?_ga=2.144860787.638557940.1557375134-916488279.1557375134).

<sup>93</sup> *Id.*

<sup>94</sup> Equality Act Hearing (statement of Tia Silas, Vice President and Global Chief Diversity and Inclusion Officer, IBM).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

tections in current law against sexual orientation and gender identity discrimination.

### **Committee Consideration**

On May 1, 2019, the Committee met in open session and ordered the bill, H.R. 5, favorably reported as an amendment in the nature of a substitute, by a rollcall vote of 22 to 10, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 5:

1. An amendment by Mr. Gohmert to strike the section of the bill prohibiting defenses or claims based on the Religious Freedom Restoration Act to any enforcement of any of the statutes amended by the bill was defeated by a rollcall vote of 8 to 18.



Roll Call No. 7Date: 5/1/14

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> CongressAmendment # 2 ( ) to ANS to HR 5 offered by Rep. Gohmert☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)			
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-02)		✓	
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)			
	AYES	NOS	PRES
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)	✓		
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)			
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)			
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	8	18	

2. An amendment by Mr. McClintock to add a rule of construction providing that nothing in the Act or any amendment made by it should be construed to require a health care provider to affirm the gender identity of a minor was defeated by a rollcall vote of 7 to 19.

Roll Call No. 8

Date: 5/1/19

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> CongressAmendment # 3 ( ) to ANS to HRS offered by Rep. McClintock☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-02)		✓	
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	NOS	PRES.
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)			
John Ratcliffe (TX-04)	✓		
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	7	14	

3. An amendment by Mr. Steube to add a rule of construction providing that nothing in the Act or any amendment made by it may be construed to require a biological female to face competition from a biological male in any sporting event was defeated by a roll-call vote of 10 to 22.

Roll Call No. 9

Date: 5/1/19

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> Congress

Amendment # 5 ( ) to ANS to HR 5 offered by Rep. Steube

☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-02)		✓	
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	NOS	PRES.
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)	✓		
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)			
	AYES	NOS	PRES.
TOTAL	10	22	

4. An amendment in the nature of a substitute by Mr. Nadler making a series of technical revisions to the bill was agreed to by a rollcall vote of 22 to 10.

Roll Call No. 10

Date: 5/1/14

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> Congress

Amendment # 1 (ANS) to HR 5 offered by Rep. Nadler

☒ PASSED☐ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-02)	✓		
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)		✓	
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)		✓	
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)		✓	
	AYES	NOS	PRES.
TOTAL	22	10	

5. Motion to report H.R. 5, as amended, favorably was agreed to by a vote of 22 to 10.



Roll Call No. 11

Date: 5/1/19

## COMMITTEE ON THE JUDICIARY

House of Representatives  
116<sup>th</sup> CongressFinal Passage on HR 5, as amended☒ PASSED☐ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-02)	✓		
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)		✓	
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)		✓	
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)		✓	
	AYES	NOS	PRES
TOTAL	22	10	

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### **New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate**

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

### **Duplication of Federal Programs**

No provision of H.R. 5 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5 would amend the Civil Rights Act of 1964 and other federal civil rights statutes to prohibit discrimination on the basis of sexual orientation and gender identity.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

### **Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Section 1. Short Title.* Section 1 sets forth the short title of the bill as the “Equality Act.”

*Section 2. Findings and Purpose.* Section 2(a) sets forth various findings about the history, nature, and prevalence of discrimination against lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) people and discrimination against women by places of public ac-

commodation and by entities that receive federal financial assistance. Section 2(b) provides that the purpose of the Equality Act is to expand, clarify, confirm, and create greater consistency in the anti-discrimination protections and remedies provided for under current civil rights statutes.

*Section 3. Public Accommodations.* Section 3(a) amends section 201 of the Civil Rights Act of 1964 (“1964 Act”). Section 201 of the 1964 Act currently prohibits discrimination or segregation on the basis of race, color, religion, or national origin by places of public accommodation whose operations affect interstate commerce or where discrimination is supported by state action. Places of public accommodation currently include hotels, restaurants, movie theaters, concert halls, sports arenas, stadiums, and any facilities physically located within such places. Section 3(a)(1) of the bill would add “sex (including sexual orientation and gender identity)” to the list of characteristics protected by Section 201 of the 1964 Act. Section 3(a)(2) would also strike “stadium or other place of exhibition or entertainment” from the list of public accommodations under Section 201 and replace it with “stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display.” It would also add to the list of public accommodations covered by Section 201 the following places: any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or that provides health care, accounting, or legal services. Finally, it would add any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service to the list of public accommodations covered by Section 201.

Section 3(b) of the bill amends Section 202 of the 1964 Act. Section 202 currently prohibits discrimination or segregation of any kind at any establishment or place based on race, color, religion, or national origin where such discrimination or segregation is or purports to be required by state or local law. Section 3(b) would add “sex (including sexual orientation and gender identity)” to the list of protected characteristics under Section 202 of the 1964 Act.

Section 3(c) of the bill would amend Title II of the 1964 Act (governing public accommodations) to add a new Section 208 setting forth a rule of construction. The rule of construction would provide that a reference to an “establishment” in Title II must be construed to “include an individual whose operations affect commerce and who is a provider of a good, service, or program” and must *not* be construed “to be limited to a physical facility or place.” The purpose of this rule of construction is to clarify that public accommodations include non-physical providers of goods and services, like online-only businesses.

*Section 4. Desegregation of Public Facilities.* Section 4 of the bill amends Section 301(a) of the 1964 Act. Section 301(a) currently authorizes the Attorney General to initiate a civil action against any appropriate parties and for any appropriate relief when: (1) the Attorney General receives a complaint from an individual that the individual is being deprived of or threatened with the loss of his right to equal protection of the laws on account of the individual’s race,

color, religion, or national origin; (2) by a facility owned by a state or one of its subdivisions, other than a public school or public college; (3) the Attorney General believes that the complaint is meritorious and certifies that the person complaining of the deprivation is unable to initiate and maintain appropriate legal proceedings; and (4) the institution of a civil action by the Attorney General would “materially further the orderly progress of desegregation of public facilities.” Section 4 of the bill would add “sex (including sexual orientation and gender identity)” to the list of bases for discrimination that would trigger this litigation authority under Section 301(a) of the 1964 Act.

*Section 5. Desegregation of Public Education.* Section 5(a) amends the definition of “desegregation” contained in Section 401(b) of the 1964 Act, which defines the term for purposes of Title IV of the Act (covering discrimination in public education). Section 401(b) defines “desegregation” to mean “the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but ‘desegregation’ shall not mean the assignment of students to public schools in order to overcome racial imbalance.” Section 5 of the bill would add “(including sexual orientation and gender identity)” before “or national origin.”

Section 5(b) amends Section 407(a) of the 1964 Act. Section 407(a) authorizes the Attorney General to pursue a civil action when, among other things, he or she receives a written complaint “signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin.” Section 5(b) would add “(including sexual orientation and gender identity)” before “or national origin.”

Finally, Section 5(c) amends Section 410 of the 1964 Act. Section 410 provides that nothing in Title IV of the Act “shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.” Section 5(c) would add “(including sexual orientation and gender identity)” before “or national origin.”

*Section 6. Federal Funding.* Section 6 amends Section 601 of the 1964 Act. Section 601 prohibits discrimination under, exclusion from, participation in, or denial of the benefits of any program or activity that receives federal funding on the ground of race, color, or national origin. Section 6 of the bill would add “sex (including sexual orientation and gender identity)” to the list of protected characteristics.

*Section 7. Employment.* Section 7 makes a number of amendments to Title VII of the 1964 Act, which governs employment discrimination. Section 7(a) provides that the rules of construction added to the 1964 Act by Section 9(3) of the bill apply to Title VII, except that references in those rules to an “unlawful practice” should be considered references to an “unlawful employment practice.”

Section 7(b) amends section 703 of the 1964 Act. Section 703 outlaws employment discrimination on the basis of “race, color, religion, sex, or national origin.” Section 7(b) would replace references to “sex” with references to “sex (including sexual orientation and gender identity).” It also amends Section 703(e)(1). Section 703(e)(1) is an exception to the general prohibition on employment

discrimination on the basis of religion, sex, or national origin for those instances where religion, sex, or national origin “is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise . . . .” Section 7(b) of the bill would add after “enterprise” the clarification that this exception applies only if “in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.” For example, if it were a bona fide occupational qualification for a position that the employee or applicant be a woman, the employer would be allowed to discriminate against men but could not discriminate against a transgender woman.

Section 7(c) of the bill amends Section 704(b) of the 1964 Act. Section 704(b) makes it an unlawful employment practice for “an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining” to print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin. Section 704(b) also makes an exception for situations when religion, sex, or national origin is a bona fide occupational qualification for employment. Section 7(c) of the bill explicitly clarifies that the prohibition on sex discrimination in this context includes sexual orientation and gender identity. It also clarifies that, with respect to the “bona fide occupational qualification” exception, “sex” can constitute a bona fide occupational qualification only where individuals are recognized as qualified in accordance with their gender identity.

Section 7(d) of the bill amends Section 706(g)(2)(A) of the 1964 Act. Section 706(g)(2)(A) provides that no court order may “require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or” in retaliation for opposing an employment practice that is unlawful under Title VII. Section 7(d) clarifies that “sex” as used in this provision includes sexual orientation and gender identity.

Section 7(e) amends Section 717 of the 1964 Act. Section 717, among other things, makes it unlawful for the federal government to discriminate in employment decisions based on race, color, religion, sex, or national origin. Section 7(e) clarifies that “sex” as used in this provision includes sexual orientation and gender identity.

Section 7(f) amends the Government Employee Rights Act of 1991 (“GERA”). The GERA prohibits discrimination against presidential appointees and certain other government officials based on, among other things, race, color, religion, sex, or national origin. Section 7(f) clarifies that “sex” as used in this Act includes sexual orientation and gender identity. It also adds at the end a provision applying to the Act by cross-reference the rules of construction and the provision prohibiting the Religious Freedom Restoration Act (“RFRA”) to be used as a basis for a claim or defense against en-

forcement of the civil rights statutes amended by H.R. 5 that were added to the 1964 Act by Section 9 of the bill, except that a reference to the protected classes in those provisions also includes age and disability as protected characteristics under the GERA.

Section 7(g) amends the Congressional Accountability Act of 1995 (“CAA”). The CAA applied various labor and employment laws to Congress, including the employment discrimination prohibitions under Title VII of the 1964 Act. Section 7(g)(1) clarifies that the prohibition on sex discrimination includes prohibitions on discrimination based on sexual orientation and gender identity. Section 7(g)(2) adds a provision applying to the Act by cross-reference the rules of construction and the RFRA-related provision that were added to the 1964 Act by Section 9 of the bill, except that a reference to the protected classes in those provisions also includes age and disability as protected characteristics under the CAA.

Section 7(h) amends the Civil Service Reform Act of 1978 (“CSRA”). The CSRA generally establishes various rules and procedures governing the federal civil service. Section 2301(b)(2) of the Act provides that “All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.” Section 7(h)(1) would explicitly clarify that “sex” as used in this provision includes sexual orientation and gender identity. Section 7(h)(2) would make a similar clarification in Section 2302(b)(1)(A) of the Act, which prohibits a supervisory employee from discriminating against a subordinate on the basis of race, color, religion, sex, or national origin, and to Section 2303(d)(1) of the CSRA, which provides that the Act does not diminish, among other things, any right or remedy under Title VII of the 1964 Act. Finally, Section 7(h)(3) of the bill adds a provision applying to the CSRA by cross-reference the rules of construction and the RFRA-related provision that were added to the 1964 Act by Section 9 of the bill, except that a reference to the protected classes in those provisions also includes age, a “handicapping condition,” marital status, and political affiliation as protected characteristics under the CSRA.

*Section 8. Intervention.* Section 8 of the bill amends Section 902 of the 1964 Act. Section 902 authorizes the Attorney General to intervene in any civil action “seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin” where the Attorney General certifies that the case is of general public importance. Section 8 would expressly clarify that “sex” as used in this provision includes sexual orientation and gender identity.

*Section 9. Miscellaneous.* Section 9 of the bill amends Title XI of the 1964 Act. Title XI contains miscellaneous provisions of the Act, including provisions governing criminal contempt, providing the Attorney General with authority to intervene in cases under certain circumstances, rules of construction, and authorization of appropriations. Section 9(1) of the bill re-designates Sections 1101 through 1104 and sections 1105 and 1106 of the 1964 Act as Sections 1102 through 1105 and 1108 and 1109, respectively.

Section 9(2) creates a new Section 1101 of the 1964 Act. New Section 1101(a) would provide definitions for certain terms used in Titles II, III, IV, VI, VII, and IX of the 1964 Act, referred to collectively as the “covered titles.” New Section 1101(a)(1) defines “race, color, religion, sex (including sexual orientation and gender identity), or national origin”, when used with respect to an individual, to include (A) the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of another person with whom the individual is or has been associated and (B) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of the individual. These changes comport the statute with the reasoning of judicial and administrative decisions finding that associational discrimination and discrimination based on perceived protected characteristics can constitute unlawful discrimination under the 1964 Act.

New Section 1101(a)(2) defines “gender identity” to mean “the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.”

New Section 1101(a)(3) defines “including” to mean “including, but not limited to,” consistent with the term’s standard meaning in federal law.

New Section 1101(a)(4) defines “sex” to include: (A) a sex stereotype; (B) pregnancy, childbirth, or a related medical condition; (C) sexual orientation or gender identity; and (D) sex characteristics, including intersex traits. This definition conforms the statute with judicial and administrative decisions interpreting portions of the 1964 Act in this manner.

New Section 1101(a)(5) defines “sexual orientation” to mean “homosexuality, heterosexuality, or bisexuality.”

New Section 1101(b)(1) provides that, with respect to any of the covered titles of the 1964 Act, pregnancy, childbirth, or a related medical condition may not receive less favorable treatment than other physical conditions when considering a claim of sex-based discrimination.

New Section 1101(b)(2) prohibits an individual from being denied access to a “shared facility,” including a restroom, a locker room, and a dressing room, that is in accordance with the person’s gender identity.

Section 9(3) of the bill creates new Sections 1106 and 1107 of the 1964 Act. New Section 1106(a) provides a rule of construction specifying that nothing in the definitions of the Act or in any covered title shall be construed to either limit the protection against employment discrimination on the basis of pregnancy, childbirth, or a related medical or any other protection against sex discrimination under any other provision of federal law.

New Section 1106(b) provides that nothing in the Act’s definitions or in any covered title shall be construed to limit claims or remedies available to an individual for discrimination based on race, color, religion, sex (including sexual orientation and gender identity), or national origin under any other law, regulation, or policy.

New Section 1106(c) provides that nothing in the Act’s definitions or in any covered title shall be construed to support an inference

that any federal law prohibiting sex discrimination does not also prohibit discrimination on the basis of pregnancy, childbirth, or a related medical condition, sexual orientation, gender identity, or a sex stereotype.

New Section 1107 provides an exception to RFRA. RFRA provides that, in order to survive a legal challenge, government action that places a substantial burden on the free exercise of religion must serve a compelling government interest and be the least restrictive means available to serve that interest. New Section 1107 states that RFRA shall not provide a claim or defense or a basis for challenging the application or enforcement of a covered title under the 1964 Act.

*Section 10. Housing.* Section 10 of the bill amends the Fair Housing Act. Section 10(a) amends Section 802 of the Act, which contains definitions for terms used in the Act. Section 10(a)(1) would add definitions for “gender identity,” “sex,” and “sexual orientation” through a cross-reference to the definitions of those terms provided in new Section 1101(a) of the 1964 Act (added by Section 9(2) of the bill). Section 10(a)(1) also adds a clarifying definition for “race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin” to provide that these terms, when used with respect to an individual, include: (1) the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of another person with whom the individual is or has been associated; or (2) a perception or belief concerning the individual’s race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin.

Section 10(a)(2) of the bill amends Section 804 of the Fair Housing Act. Section 804 prohibits discrimination on the basis of race, color, religion, sex, familial status, or national origin in the sale or rental of housing. Section 10(a)(2) would make clear that sex discrimination in this context includes discrimination based on sexual orientation or gender identity by inserting “(including sexual orientation and gender identity)” after “sex” in every place that term appears in Section 804.

Section 10(a)(3) of the bill amends Section 805 of the Fair Housing Act. Section 805 prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin in real estate-related transactions. Section 10(a)(3) would make clear that sex discrimination in this context includes discrimination based on sexual orientation or gender identity by inserting “(including sexual orientation and gender identity)” after “sex” in every place that term appears in Section 805.

Section 10(a)(4) of the bill amends Section 806 of the Fair Housing Act. Section 806 prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin in the provision of brokerage services. Section 10(a)(4) would make clear that sex discrimination in this context includes discrimination on the basis of sexual orientation or gender identity by inserting “(including sexual orientation and gender identity)” after “sex.”

Section 10(a)(5) of the bill amends Section 808(e)(6) of the Fair Housing Act. Section 808(e)(6) requires the Secretary of Housing and Urban Development to issue a report to Congress and the public providing “data on the race, color, religion, sex, national origin,



age, handicap, and family characteristics” of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department of Housing and Urban Development. Section 10(a)(5) amends this provision by adding “(including sexual orientation and gender identity)” after “sex.”

Section 10(a)(6) adds at the end of the Fair Housing Act new Sections 821 and 822. New Section 821 adds to the Fair Housing Act and Section 901 of the Civil Rights Act of 1968 (which provides criminal penalties for certain acts of discrimination with respect to housing) by cross-reference the rules of construction added to the 1964 Act by Sections 9(2) and 9(3) of the bill, except that references to a “covered title” in those provisions would refer instead to the Fair Housing Act and Section 901. Similarly, Section 10(a)(6) would also add a new Section 822, which would add to the Fair Housing Act and Section 901 by cross-reference the RFRA-related provision added to the 1964 Act by Section 9(3) of the bill, except that the Fair Housing Act and Section 901 would be the “covered title” for purposes of this section.

Section 10(b) amends Section 901 of the Civil Rights Act of 1968. Section 901 provides for criminal penalties for any person who, among other things, by force or threat of force, willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with any person because he or she is, or is engaged in activities related to, selling, purchasing, or renting housing, because of his race, color, religion, sex, handicap, familial status, or national origin. Section 10(b) inserts “(including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act))” after “sex” in each place that term appears in Section 901.

*Section 11. Equal Credit Opportunity.* Section 11(a) of the bill amends Section 701(a)(1) of the Equal Credit Opportunity Act (“ECOA”). Section 701(a)(1) prohibits a creditor from discriminating against a credit applicant “on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract).” Section 11(a) inserts “(including sexual orientation and gender identity)” after “sex” in Section 701(a)(1).

Section 11(b) amends Section 702 of ECOA, which contains the definitions for certain terms as used in the Act. Section 11(b) would add a provision defining “gender identity,” “sex,” and “sexual orientation” with a cross reference to the definitions of these terms in Section 1101(a) of the 1964 Act (as added by Section 9(2) of the bill.) Similarly, it would add a provision to Section 702 clarifying that the terms “race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age,” as used with respect to an individual, includes these respective characteristics as to another person with whom the individual is or has been associated and any perception or belief, even if inaccurate, regarding the individual’s race, color, religion, national origin, sex, marital status, or age. Finally, Section 11(b) would add at the end of Section 702 a provision applying the rules outlined in Section 1101(b) (concerning pregnancy and childbirth, gender identity and shared facilities) and the rules of construction in Section 1106 of the 1964 Act (as added by Sections 9(2) and 9(3) of the bill) apply

to ECOA, except that references to a “covered title” would refer to ECOA and that 1101(b) would apply to all aspects of a credit transaction.

Section 11(c) amends Section 705(a) of ECOA. Section 705(a) provides that “A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this subchapter: *Provided, however*, That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.” Section 11(c) would insert “(including sexual orientation and gender identity)” after “sex.”

Section 11(d) amends Section 706 of ECOA. Section 706 governs private rights of action to enforce ECOA. Section 11(d) would add at the end a new subparagraph (1) providing that the RFRA-related provision contained in Section 1107 of the 1964 Act (added by Section 9(3) of the bill) applies, except that its reference to a “covered title” would be considered a reference to ECOA.

*Section 12. Juries.* Section 12 of the bill amends various provisions of Chapter 121 of Title 28 of the United States Code, which outlines jury-related requirements for federal courts. Section 12(a)(1) amends 28 U.S.C. § 1862, which prohibits discrimination against citizens from serving on federal juries “on account of race, color, religion, sex, national origin, or economic status.” Section 12(a)(1) inserts “(including sexual orientation and gender identity)” after “sex.”

Section 12(a)(2) amends 28 U.S.C. § 1867(e), which provides that the procedures outlined in Section 1867 shall be the exclusive procedures for challenging juror selection in federal court. The second sentence of Section 1867(e) clarifies that nothing “in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of persons for service on grand or petit juries.” Section 12(a)(2) inserts “(including sexual orientation and gender identity)” after “sex.”

Section 12(a)(3) amends 28 U.S.C. § 1869, which defines certain terms used in jury-related provisions of the United States Code. Section 12(a)(3) adds by cross reference to Section 1101(a) of the 1964 Act (as added by Section 9 of the bill) definitions of “gender identity,” “sex,” and “sexual orientation.” It also provides that “race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, as applied to an individual, includes” these characteristics with respect to another person who is or has been associated with the individual and the perception or belief, even if inaccurate, of the individuals race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin.

Section 12(a)(4) adds at the end of Chapter 121 of Title 28 a new Section 1879 that applies the pregnancy and gender identity-related rules of construction and RFRA-related provision outlined in Sections 1101(b), 1106, and 1107 of the 1964 Act (as added by Sec-

tion 9 of the bill), except that references to “covered title” in those sections are to be considered references to Chapter 121.

Finally, Section 12(b) of the bill makes technical and conforming amendments to the table of sections for Chapter 121 of Title 28.

### **Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 5, as reported, are shown as follows:

#### **CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

### **CIVIL RIGHTS ACT OF 1964**

\* \* \* \* \*

#### **TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION**

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, *sex (including sexual orientation and gender identity)*, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant cafeteria, lunchroom, lunch counter, soda fountain, other facility principally engaged in selling food for consumption on the premises, including but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, **[**stadium or other place exhibition or entertainment; and**]** *stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display;*

(4) *any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services;*

(5) *any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service; and*

[(4)] (6) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, and establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, “commerce” means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) The provisions of this title shall not apply to private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, *sex (including sexual orientation and gender identity)*, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

\* \* \* \* \*

**SEC. 208. RULE OF CONSTRUCTION.**

*A reference in this title to an establishment—*

(1) *shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program; and*

(2) *shall not be construed to be limited to a physical facility or place.*

### TITLE III—DESEGREGATION OF PUBLIC FACILITIES

SEC. 301. (a) Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, sex (*including sexual orientation and gender identity*), or national origin, by being denied equal utilization of any public facility, which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

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### TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

#### DEFINITIONS

SEC. 401. As used in this title—

(a) “Commissioner” means the Commissioner of Education.

(b) “Desegregation” means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex (*including sexual orientation and gender identity*), or national origin, but “desegregation” shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) “Public school” means any elementary or secondary educational institution, and “public college” means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or govern-

mental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

\* \* \* \* \*

#### SUITS BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason or race, color, religion, sex (*including sexual orientation and gender identity*), or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is

a writing or document within the meaning of section 1001, title 18, United States Code.

\* \* \* \* \*

SEC. 410. Nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, sex (*including sexual orientation and gender identity*), or national origin.

\* \* \* \* \*

#### TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, sex (*including sexual orientation and gender identity*), or national origin, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.

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#### TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

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##### **SEC. 701A. RULES OF CONSTRUCTION.**

*Section 1106 shall apply to this title except that for purposes of that application, a reference in that section to an “unlawful practice” shall be considered to be a reference to an “unlawful employment practice”.*

\* \* \* \* \*

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, [SEX,] SEX (*INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY*), OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, [sex,] sex (*including sexual orientation and gender identity*), or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, [sex,] sex (*including sexual orientation and gender identity*), or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because of his race, color, religion, [sex,] sex (*including sexual orientation and gender identity*), or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, [sex,] sex (*including sexual orientation and gender identity*), or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, **[sex,]** *sex (including sexual orientation and gender identity)*, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, **[sex,]** *sex (including sexual orientation and gender identity)*, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, **[sex,]** *sex (including sexual orientation and gender identity)*, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or **[enterprise,]** *enterprise, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity*, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by any employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or



Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to

membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin.

(l) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, [sex,] *sex*

(including sexual orientation and gender identity), or national origin.

(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n)(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to—

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.

## OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification, or discrimination, based on race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for [employment.] *employment, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.*

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## PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is

not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e)(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court.

The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought

within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g)(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, **[sex,]** *sex (including sexual orientation and gender identity)*, or national origin or in violation of section 704(a).

(B) On a claim in which an individual proves a violation under section 703(m) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 703(m); and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).



(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

\* \* \* \* \*

#### NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the General Accounting Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin.

(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual

basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, [sex] *sex (including sexual orientation and gender identity)*, or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 706 (f) through (k), as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties..

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure non-discrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 706(e)(3) shall apply to complaints of discrimination in compensation under this section.

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TITLE IX—INTERVENTION AND PROCEDURE AFTER  
REMOVAL IN CIVIL RIGHTS CASES

\* \* \* \* \*

SEC. 902. Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex (*including sexual orientation and gender identity*), or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

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TITLE XI—MISCELLANEOUS

**SEC. 1101. DEFINITIONS AND RULES.**

(a) **DEFINITIONS.**—*In titles II, III, IV, VI, VII, and IX (referred to individually in sections 1106 and 1107 as a “covered title”):*

(1) **RACE; COLOR; RELIGION; SEX; SEXUAL ORIENTATION; GENDER IDENTITY; NATIONAL ORIGIN.**—*The term “race”, “color”, “religion”, “sex” (including “sexual orientation” and “gender identity”), or “national origin”, used with respect to an individual, includes—*

(A) *the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of another person with whom the individual is associated or has been associated; and*

(B) *a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of the individual.*

(2) **GENDER IDENTITY.**—*The term “gender identity” means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.*

(3) **INCLUDING.**—*The term “including” means including, but not limited to, consistent with the term’s standard meaning in Federal law.*

(4) **SEX.**—*The term “sex” includes—*

(A) *a sex stereotype;*

(B) *pregnancy, childbirth, or a related medical condition;*

(C) *sexual orientation or gender identity; and*

(D) *sex characteristics, including intersex traits.*

(5) **SEXUAL ORIENTATION.**—*The term “sexual orientation” means homosexuality, heterosexuality, or bisexuality.*

(b) **RULES.**—*In a covered title referred to in subsection (a)—*

(1) *(with respect to sex) pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions; and*

(2) *(with respect to gender identity) an individual shall not be denied access to a shared facility, including a restroom, a*

*locker room, and a dressing room, that is in accordance with the individual's gender identity.*

**[SEC. [1101.] 1102. In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than \$1,000 or imprisoned for more than six months.**

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

**[SEC. [1102.] 1103. No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.**

**[SEC. [1103.] 1104. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.**

**[SEC. [1104.] 1105. Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.**

**SEC. 1106. RULES OF CONSTRUCTION.**

(a) *SEX*.—Nothing in section 1101 or the provisions of a covered title incorporating a term defined or a rule specified in that section shall be construed—

(1) *to limit the protection against an unlawful practice on the basis of pregnancy, childbirth, or a related medical condition provided by section 701(k); or*

(2) to limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than that covered title, prohibiting a practice on the basis of sex.

(b) **CLAIMS AND REMEDIES NOT PRECLUDED.**—Nothing in section 1101 or a covered title shall be construed to limit the claims or remedies available to any individual for an unlawful practice on the basis of race, color, religion, sex (including sexual orientation and gender identity), or national origin including claims brought pursuant to section 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or any other law, including a Federal law amended by the Equality Act, regulation, or policy.

(c) **NO NEGATIVE INFERENCE.**—Nothing in section 1101 or a covered title shall be construed to support any inference that any Federal law prohibiting a practice on the basis of sex does not prohibit discrimination on the basis of pregnancy, childbirth, or a related medical condition, sexual orientation, gender identity, or a sex stereotype.

**SEC. 1107. CLAIMS.**

The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.

**[SEC. [1105.] 1108. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.**

**[SEC. [1106.] 1109. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.**

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**GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991**

**TITLE III—GOVERNMENT EMPLOYEE RIGHTS**

**SEC. 301. GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.**

(a) **SHORT TITLE.**—This title may be cited as the “Government Employee Rights Act of 1991”.

(b) **PURPOSE.**—The purpose of this title is to provide procedures to protect the rights of certain government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, [sex,] sex (including sexual orientation and gender identity), national origin, age, or disability.

(c) **DEFINITION.**—For purposes of this title, “violation” means a practice that violates section 302(a) of this title.

**SEC. 302. DISCRIMINATORY PRACTICES PROHIBITED.**

(a) **PRACTICES.**—All personnel actions affecting the Presidential appointees described in section 303 or the State employees described in section 304 shall be made free from any discrimination based on—

(1) race, color, religion, [sex,] *sex (including sexual orientation and gender identity)*, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102 through 104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112-14).

(b) REMEDIES.—The remedies referred to in sections 303(a)(1) and 304(a)—

(1) may include, in the case of a determination that a violation of subsection (a)(1) or (a)(3) has occurred, such remedies as would be appropriate if awarded under sections 706(g), 706(k), and 717(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g), 2000e-5(k), 2000e-16(d)), and such compensatory damages as would be appropriate if awarded under section 1977 or sections 1977A(a) and 1977A(b)(2) of the Revised Statutes (42 U.S.C. 1981 and 1981a (a) and (b)(2));

(2) may include, in the case of a determination that a violation of subsection (a)(2) has occurred, such remedies as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)); and

(3) may not include punitive damages.

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#### **SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.**

*Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this title except that for purposes of that application, a reference in that section 1106 to “race, color, religion, sex (including sexual orientation and gender identity), or national origin” shall be considered to be a reference to “race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability”.*

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### **CONGRESSIONAL ACCOUNTABILITY ACT OF 1995**

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## TITLE II—EXTENSION OF RIGHTS AND PROTECTIONS

### PART A—EMPLOYMENT DISCRIMINATION, FAMILY AND MEDICAL LEAVE, FAIR LABOR STANDARDS, EMPLOYEE POLYGRAPH PROTECTION, WORKER ADJUSTMENT AND RETRAINING, EMPLOYMENT AND REEMPLOYMENT OF VETERANS, AND INTIMIDATION

#### SEC. 201. RIGHTS AND PROTECTIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE REHABILITATION ACT OF 1973, AND TITLE I OF THE AMERICANS WITH DISABILITIES ACT OF 1990.

(a) **DISCRIMINATORY PRACTICES PROHIBITED.**—All personnel actions affecting covered employees shall be made free from any discrimination based on—

(1) race, color, religion, sex, (*including sexual orientation and gender identity*), or national origin, within the meaning of section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102 through 104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112–12114).

(b) **REMEDY.**—

(1) **CIVIL RIGHTS.**—The remedy for a violation of subsection

(a)(1) shall be—

(A) such remedy as would be appropriate if awarded under section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)); and

(B) such compensatory damages as would be appropriate if awarded under section 1977 of the Revised Statutes (42 U.S.C. 1981), or as would be appropriate if awarded under sections 1977A(a)(1), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes (42 U.S.C. 1981a(a)(1), 1981a(b)(2), and 1981a(b)(3)(D)).

(2) **AGE DISCRIMINATION.**—The remedy for a violation of subsection (a)(2) shall be—

(A) such remedy as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)); and

(B) such liquidated damages as would be appropriate if awarded under section 7(b) of such Act (29 U.S.C. 626(b)).

In addition, the waiver provisions of section 7(f) of such Act (29 U.S.C. 626(f)) shall apply to covered employees.

(3) **DISABILITIES DISCRIMINATION.**—The remedy for a violation of subsection (a)(3) shall be—

(A) such remedy as would be appropriate if awarded under section 505(a)(1) of the Rehabilitation Act of 1973

(29 U.S.C. 794a(a)(1)) or section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)); and

(B) such compensatory damages as would be appropriate if awarded under sections 1977A(a)(2), 1977A(a)(3), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes (42 U.S.C. 1981a(a)(2), 1981a(a)(3), 1981a(b)(2), and 1981a(b)(3)(D)).

(c) APPLICATION TO GENERAL ACCOUNTING OFFICE, GOVERNMENT PRINTING OFFICE, AND LIBRARY OF CONGRESS.—

(1) SECTION 717 OF THE CIVIL RIGHTS ACT OF 1964.—Section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended by—

(A) striking “legislative and”;

(B) striking “branches” and inserting “branch”; and

(C) inserting “Government Printing Office, the General Accounting Office, and the” after “and in the”.

(2) SECTION 15 OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—Section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)) is amended by—

(A) striking “legislative and”;

(B) striking “branches” and inserting “branch”; and

(C) inserting “Government Printing Office, the General Accounting Office, and the” after “and in the”.

(3) SECTION 509 OF THE AMERICANS WITH DISABILITIES ACT OF 1990.—Section 509 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(A) by striking subsections (a) and (b) of section 509;

(B) in subsection (c), by striking “(c)INSTRUMENTALITIES OF CONGRESS.—” and inserting “The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:”;

(C) by striking the second sentence of paragraph (2);

(D) in paragraph (4), by striking “the instrumentalities of the Congress include” and inserting “the term‘instrumentality of the Congress’means”, by striking “the Architect of the Capitol, the Congressional Budget Office”, by inserting “and” before “the Library”, and by striking “the Office of Technology Assessment, and the United States Botanic Garden”;

(E) by redesignating paragraph (5) as paragraph (7) and by inserting after paragraph (4) the following new paragraph:

“(5) ENFORCEMENT OF EMPLOYMENT RIGHTS.—The remedies and procedures set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 102 through 104 of this Act that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.”; and

(F) by amending the title of the section to read “**INSTRUMENTALITIES OF THE CONGRESS**”.



(d) **EFFECTIVE DATE.**—This section shall take effect 1 year after the date of the enactment of this Act.

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**SEC. 208. RULES OF CONSTRUCTION AND CLAIMS.**

*Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to section 201 (and remedial provisions of this Act related to section 201) except that for purposes of that application, a reference in that section 1106 to “race, color, religion, sex (including sexual orientation and gender identity), or national origin” shall be considered to be a reference to “race, color, religion, sex (including sexual orientation and gender identity), national origin, age, or disability”.*

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**TITLE 5, UNITED STATES CODE**

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**PART III—EMPLOYEES**

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**SUBPART A—GENERAL PROVISIONS**

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**CHAPTER 23—MERIT SYSTEM PRINCIPLES**

Sec.

2301. Merit system principles.

2302. Prohibited personnel practices.

2303. Prohibited personnel practices in the Federal Bureau of Investigation.

2304. Prohibited personnel practices affecting the Transportation Security Administration.

2305. Responsibility of the Government Accountability Office.

2306. Coordination with certain other provisions of law.

**§ 2301. Merit system principles**

(a) This section shall apply to—

- (1) an Executive agency; and
- (2) the Government Publishing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, [sex,] *sex (including sexual orientation and gender identity)*, marital status, age, or handicapping

condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

#### **§ 2302. Prohibited personnel practices**

(a)(1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b).

(2) For the purpose of this section—

(A) “personnel action” means—

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

- (iv) a detail, transfer, or reassignment;
- (v) a reinstatement;
- (vi) a restoration;
- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of this title or under title 38;
- (ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;
- (x) a decision to order psychiatric testing or examination;
- (xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and
- (xii) any other significant change in duties, responsibilities, or working conditions;

with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

(B) “covered position” means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action—

- (i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or
- (ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration;

(C) “agency” means an Executive agency and the Government Publishing Office, but does not include—

- (i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D);

(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office; and

(II) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, provided that the determination be made prior to a personnel action; or

- (iii) the Government Accountability Office; and

(D) “disclosure” means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—

- (i) any violation of any law, rule, or regulation; or

- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—
  - (1) discriminate for or against any employee or applicant for employment—
    - (A) on the basis of race, color, religion, sex, (*including sexual orientation and gender identity*), or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
    - (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
    - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
    - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
    - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
  - (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
    - (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
    - (B) an evaluation of the character, loyalty, or suitability of such individual;
  - (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
  - (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
  - (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
  - (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
  - (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) any violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) any violation (other than a violation of this section) of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—

(i) with regard to remedying a violation of paragraph (8); or

(ii) other than with regard to remedying a violation of paragraph (8);

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);

(C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) refusing to obey an order that would require the individual to violate a law, rule, or regulation;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;

(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or

(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).

This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

(c)(1) In this subsection—

(A) the term "new employee" means an individual—

(i) appointed to a position as an employee on or after the date of enactment of this subsection; and

(ii) who has not previously served as an employee; and

(B) the term "whistleblower protections" means the protections against and remedies for a prohibited personnel practice described in paragraph (8) or subparagraph (A)(i), (B), (C), or (D) of paragraph (9) of subsection (b).

(2) The head of each agency shall be responsible for—

(A) preventing prohibited personnel practices;

(B) complying with and enforcing applicable civil service laws, rules, and regulations and other aspects of personnel management; and

(C) ensuring, in consultation with the Special Counsel and the Inspector General of the agency, that employees of the agency are informed of the rights and remedies available to the employees under this chapter and chapter 12, including—

(i) information with respect to whistleblower protections available to new employees during a probationary period;

(ii) the role of the Office of Special Counsel and the Merit Systems Protection Board with respect to whistleblower protections; and

(iii) the means by which, with respect to information that is otherwise required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, an employee may make a lawful disclosure of the information to—

(I) the Special Counsel;

(II) the Inspector General of an agency;

(III) Congress; or

(IV) another employee of the agency who is designated to receive such a disclosure.

(3) The head of each agency shall ensure that the information described in paragraph (2) is provided to each new employee of the agency not later than 180 days after the date on which the new employee is appointed.

(4) The head of each agency shall make available information regarding whistleblower protections applicable to employees of the agency on the public website of the agency and on any online portal that is made available only to employees of the agency, if such portal exists.

(5) Any employee to whom the head of an agency delegates authority for any aspect of personnel management shall, within the limits of the scope of the delegation, be responsible for the activities described in paragraph (2).

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, (*including sexual orientation and gender identity*), or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(e)(1) For the purpose of this section, the term “veterans’ preference requirement” means any of the following provisions of law:

(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.

(B) Sections 943(c)(2) and 1784(c) of title 10.

(C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.

(D) Section 301(c) of the Foreign Service Act of 1980.

(E) Sections 106(f), 7281(e), and 7802(5) of title 38.

(F) Section 1005(a) of title 39.

(G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.

(H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

(f)(1) A disclosure shall not be excluded from subsection (b)(8) because—

(A) the disclosure was made to a supervisor or to a person who participated in an activity that the employee or applicant reasonably believed to be covered by subsection (b)(8)(A)(i) and (ii);

(B) the disclosure revealed information that had been previously disclosed;

(C) of the employee's or applicant's motive for making the disclosure;

(D) the disclosure was not made in writing;

(E) the disclosure was made while the employee was off duty;

(F) the disclosure was made before the date on which the individual was appointed or applied for appointment to a position; or

(G) of the amount of time which has passed since the occurrence of the events described in the disclosure.

(2) If a disclosure is made during the normal course of duties of an employee, the principal job function of whom is to regularly investigate and disclose wrongdoing (referred to in this paragraph as the "disclosing employee"), the disclosure shall not be excluded from subsection (b)(8) if the disclosing employee demonstrates that an employee who has the authority to take, direct other individuals to take, recommend, or approve any personnel action with respect to the disclosing employee took, failed to take, or threatened to take or fail to take a personnel action with respect to the disclosing employee in reprisal for the disclosure made by the disclosing employee.

\* \* \* \* \*



**SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.**

*Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter (and remedial provisions of this title related to this chapter) except that for purposes of that application, a reference in that section 1106 to “race, color, religion, sex (including sexual orientation and gender identity), or national origin” shall be considered to be a reference to “race, color, religion, sex (including sexual orientation and gender identity), national origin, age, a handicapping condition, marital status, or political affiliation”.*

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**FAIR HOUSING ACT**

\* \* \* \* \*

**TITLE VIII—FAIR HOUSING**

\* \* \* \* \*

**DEFINITIONS**

SEC. 802. As used in this title—

(a) “Secretary” means the Secretary of Housing and Urban Development.

(b) “Dwelling” means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) “Family” includes a single individual.

(d) “Person” includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, receivers, and fiduciaries.

(e) “To rent” includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) “Discriminatory housing practice” means an act that is unlawful under section 804, 805, 806, or 818.

(g) “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) “Handicap” means, with respect to a person—

(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(i) “Aggrieved person” includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

- (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.
- (j) “Complainant” means the person (including the Secretary) who files a complaint under section 810.
- (k) “Familial status” means one or more individuals (who have not attained the age of 18 years) being domiciled with—
- (1) a parent or another person having legal custody of such individual or individuals; or
  - (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.
- The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.
- (l) “Conciliation” means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.
- (m) “Conciliation agreement” means a written agreement setting forth the resolution of the issues in conciliation.
- (n) “Respondent” means—
- (1) the person or other entity accused in a complaint of an unfair housing practice; and
  - (2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a).
- (o) “Prevailing party” has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).
- (p) “Gender identity”, “sex”, and “sexual orientation” have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.
- (q) “Race”, “color”, “religion”, “sex” (including “sexual orientation” and “gender identity”), “handicap”, “familial status”, or “national origin”, used with respect to an individual, includes—
- (1) the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and
  - (2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of the individual.

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#### DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING AND OTHER PROHIBITED PRACTICES

SEC. 804. As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race,

color, religion, sex, (*including sexual orientation and gender identity*), familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, (*including sexual orientation and gender identity*), familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, (*including sexual orientation and gender identity*), handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, (*including sexual orientation and gender identity*), handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, (*including sexual orientation and gender identity*), handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is

30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act to receive and process complaints or otherwise engage in enforcement activities under this title.

(B) Determinations by a State or a unit of general local government under paragraphs (5) (A) and (B) shall not be conclusive in enforcement proceedings under this title.

(7) As used in this subsection, the term “covered multifamily dwellings” means—

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

#### DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

SEC. 805. (a) IN GENERAL.—It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, (*including sexual orientation and gender identity*), handicap, familial status, or national origin.

(b) DEFINITION.—As used in this section, the term “residential real estate-related transaction” means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) APPRAISAL EXEMPTION.—Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, (*including sexual orientation and gender identity*), handicap, or familial status.

#### DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

SEC. 806. After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers’ organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, (*including sexual orientation and gender identity*), handicap, familial status, or national origin.

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## ADMINISTRATION

SEC. 808. (a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) The Secretary may delegate any of his functions, duties and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institution) development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress—

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which—

(i) investigations are not completed as required by section 810(a)(1)(B);

(ii) determinations are not made within the time specified in section 810(g); and

(iii) hearings are not commenced or findings and conclusions are not made as required by section 812(g);

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on

programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, (*including sexual orientation and gender identity*), national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

(f) The provisions of law and Executive orders to which subsection (e)(6) applies are—

- (1) title VI of the Civil Rights Act of 1964;
- (2) title VIII of the Civil Rights Act of 1968;
- (3) section 504 of the Rehabilitation Act of 1973;
- (4) the Age Discrimination Act of 1975;
- (5) the Equal Credit Opportunity Act;
- (6) section 1978 of the Revised Statutes (42 U.S.C. 1982);
- (7) section 8(a) of the Small Business Act;
- (8) section 527 of the National Housing Act;
- (9) section 109 of the Housing and Community Development Act of 1974;
- (10) section 3 of the Housing and Urban Development Act of 1968;
- (11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432; and
- (12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

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**SEC. 821. RULES OF CONSTRUCTION.**

*Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1101(b) or 1106 to a “covered title” shall be considered a reference to “this title and section 901”.*

**SEC. 822. CLAIMS.**

*Section 1107 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1107 to a “covered title” shall be considered a reference to “this title and section 901”.*

# CIVIL RIGHTS ACT OF 1968

\* \* \* \* \*

## TITLE IX

### PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES

SEC. 901. Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with or attempts to injure, intimidate or interfere with—

(a) any person because of his race, color, religion, sex, (*including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act)*), handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(1) participating, without discrimination on account of race, color, religion, sex, (*including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act)*), handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin, in any of the activities, services, organizations or facilities described in subsection 901(a); or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, (*including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act)*), handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin, in any of the activities, services, organizations or facilities described in subsection 901(a), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined under title 18, United States Code, or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined under title 18, United States Code, or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sex-



ual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under title 18, United States Code, or imprisoned for any term of years or for life, or both.

\* \* \* \* \*

## EQUAL CREDIT OPPORTUNITY ACT

\* \* \* \* \*

## TITLE VII—EQUAL CREDIT OPPORTUNITY

\* \* \* \* \*

### § 701. Prohibited discrimination; reasons for adverse action

(a) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex (*including sexual orientation and gender identity*), or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(b) It shall not constitute discrimination for purposes of this title for a creditor—

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Board;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Bureau, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value;

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant; or

(5) to make an inquiry under section 704B, in accordance with the requirements of that section.

(c) It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a non-profit organization for its members or an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Board; if such refusal is required by or made pursuant to such program.

(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Bureau for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally, if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraphs (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

(6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(e) COPIES FURNISHED TO APPLICANTS.—

(1) IN GENERAL.—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

(2) **WAIVER.**—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

(3) **REIMBURSEMENT.**—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

(4) **FREE COPY.**—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

(5) **NOTIFICATION TO APPLICANTS.**—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

(6) **VALUATION DEFINED.**—For purposes of this subsection, the term “valuation” shall include any estimate of the value of a dwelling developed in connection with a creditor’s decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.

## § 702. Definitions

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term “applicant” means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term “Bureau” means the Bureau of Consumer Financial Protection.

(d) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term “creditor” means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) *The terms “gender identity”, “sex”, and “sexual orientation” have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.*

(g) *The term “race”, “color”, “religion”, “national origin”, “sex” (including “sexual orientation” and “gender identity”), “marital status”, or “age”, used with respect to an individual, includes—*

*(1) the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of another person with whom the individual is associated or has been associated; and*

*(2) a perception or belief, even if inaccurate, concerning the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of the individual.*

[(f)] (h) The term “person” means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

[(g)] (i) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Bureau under this title or the provision thereof in question.

(j) *Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application—*

*(1) a reference in those sections to a “covered title” shall be considered a reference to “this title”; and*

*(2) paragraph (1) of such section 1101(b) shall apply with respect to all aspects of a credit transaction.*

\* \* \* \* \*

#### **§ 705. Relation to State laws**

(a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex (*including sexual orientation and gender identity*), or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this title.

(c) Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided,* That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(d) When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

(e) Where the same act or omission constitutes a violation of this title and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this title or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

(f) This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this title if the Bureau determines that such law gives greater protection to the applicant.

(g) The Bureau shall by regulation exempt from the requirements of sections 701 and 702 of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this title or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this title for the purposes of section 706.

#### **§ 706. Civil liability**

(a) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for punitive damages in an amount not greater than \$10,000, in addition to any actual damages provided in subsection (a), except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of \$500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this title.

(d) In the case of any successful action under subsection (a), (b), or (c), the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) No provision of this title imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Bureau or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection duly authorized by the Bureau to issue such interpretations or approvals under such procedures as the Bureau may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than 5 years after the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 704 commences an enforce-

ment proceeding within 5 years after the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within 5 years after the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) The agencies having responsibility for administrative enforcement under section 704, if unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted. Each agency referred to in paragraphs (1), (2), and (9) of section 704(a) shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 701(a). Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 701(a).

(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(i) No person aggrieved by a violation of this title and by a violation of section 805 of the Civil Rights Act of 1968 shall recover under this title and section 812 of the Civil Rights Act of 1968, if such violation is based on the same transaction.

(j) Nothing in this title shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

(k) NOTICE TO HUD OF VIOLATIONS.—Whenever an agency referred to in paragraph (1), (2), or (3) of section 704(a)—

(1) has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation of this title has occurred;

(2) has reason to believe that the alleged violation would be a violation of the Fair Housing Act; and

(3) does not refer the matter to the Attorney General pursuant to subsection (g),

the agency shall notify the Secretary of Housing and Urban Development of the violation, and shall notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.

(l) *Section 1107 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application, a reference in that*

section to a “covered title” shall be considered a reference to “this title”.

\* \* \* \* \*

## TITLE 28, UNITED STATES CODE

\* \* \* \* \*

### PART V—PROCEDURE

\* \* \* \* \*

#### CHAPTER 121—JURIES; TRIAL BY JURY

Sec.  
1861. Declaration of policy.

\* \* \* \* \*

1879. *Rules of construction and claims.*

\* \* \* \* \*

#### § 1862. Discrimination prohibited

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, (*including sexual orientation and gender identity*), national origin, or economic status.

\* \* \* \* \*

#### § 1867. Challenging compliance with selection procedures

(a) In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(b) In criminal cases, before the voir dire examination begins, or within seven days after the Attorney General of the United States discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the Attorney General may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(c) In civil cases, before the voir dire examination begins, or within seven days after the party discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, any party may move to stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the petit jury.

(d) Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title, the moving party shall be entitled to present in support

of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the grand jury, the court shall stay the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

(e) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime, the Attorney General of the United States or a party in a civil case may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title. Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, (*including sexual orientation and gender identity*), national origin or economic status in the selection of persons for service on grand or petit juries.

(f) The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than \$1,000 or imprisoned not more than one year, or both.

\* \* \* \* \*

## **§ 1869. Definitions**

For purposes of this chapter—

(a) “clerk” and “clerk of the court” shall mean the clerk of the district court of the United States, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter;

(b) “chief judge” shall mean the chief judge of any district court of the United States;

(c) “voter registration lists” shall mean the official records maintained by State or local election officials of persons registered to vote in either the most recent State or the most recent Federal general election, or, in the case of a State or political subdivision thereof that does not require registration as a prerequisite to voting, other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where



the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate State or local officials. With respect to the districts of Guam and the Virgin Islands, "voter registration lists" shall mean the official records maintained by territorial election officials of persons registered to vote in the most recent territorial general election;

(d) "lists of actual voters" shall mean the official lists of persons actually voting in either the most recent State or the most recent Federal general election;

(e) "division" shall mean: (1) one or more statutory divisions of a judicial district; or (2) in statutory divisions that contain more than one place of holding court, or in judicial districts where there are no statutory divisions, such counties, parishes, or similar political subdivisions surrounding the places where court is held as the district court plan shall determine: *Provided*, That each county, parish, or similar political subdivision shall be included in some such division;

(f) "district court of the United States", "district court", and "court" shall mean any district court established by chapter 5 of this title, and any court which is created by Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title;

(g) "jury wheel" shall include any device or system similar in purpose or function, such as a properly programmed electronic data processing system or device;

(h) "juror qualification form" shall mean a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, which shall elicit the name, address, age, race, occupation, education, length of residence within the judicial district, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak, and understand the English language, has pending against him any charge for the commission of a State or Federal criminal offense punishable by imprisonment for more than one year, or has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored. The form shall request, but not require, any other information not inconsistent with the provisions of this title and required by the district court plan in the interests of the sound administration of justice. The form shall also elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his religion, national origin, or economic status is not a prerequisite to his qualification for jury service, that such information need not be furnished if the person finds it objectionable to do so, and that information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual's qualification for jury service.

(i) "public officer" shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office;

(j) “undue hardship or extreme inconvenience”, as a basis for excuse from immediate jury service under section 1866(c)(1) of this chapter, shall mean great distance, either in miles or traveltime, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service; [and]

(k) “jury summons” shall mean a summons issued by a clerk of court, jury commission, or their duly designated deputies, containing either a preprinted or stamped seal of court, and containing the name of the issuing clerk imprinted in preprinted, type, or facsimile manner on the summons or the envelopes transmitting the summons[.];

(l) “gender identity”, “sex”, and “sexual orientation” have the meanings given such terms under section 1101(a) of the Civil Rights Act of 1964; and

(m) “race”, “color”, “religion”, “sex” (including “sexual orientation” and “gender identity”), “economic status”, or “national origin”, used with respect to an individual, includes—

(1) the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of the individual.

\* \* \* \* \*

#### **§ 1879. Rules of construction and claims**

Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter, except that for purposes of that application, a reference in those sections to a “covered title” shall be considered a reference to “this chapter”.

\* \* \* \* \*

## Committee Correspondence

ELIJAH E. CUMMINGS, MARYLAND  
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO  
RANKING MINORITY MEMBER

### Congress of the United States House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAIL ROOM (202) 225-5001  
MESSAGE (202) 225-5074  
<http://oversight.house.gov>

May 6, 2019

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I write concerning H.R. 5, the Equality Act. This bill contains provisions within the jurisdiction of the Committee on Oversight and Reform. As a result of your having consulted with me concerning the provisions of the bill that fall within our jurisdiction under Rule X, I agree to forgo consideration of the bill so it may proceed expeditiously to the House floor.

The Committee takes this action with our mutual understanding that by forgoing consideration of H.R. 5, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and we will be appropriately consulted and involved as the bill or similar legislation moves forward so we may address any remaining issues within our Rule X jurisdiction. Further, I request your support for the appointment of conferees from the Committee on Oversight and Reform during any House-Senate conference on this or related legislation.

Finally, I would appreciate a response confirming this understanding and ask that a copy of our exchange of letters on this matter be included in the bill report filed by the Committee on the Judiciary, as well as in the Congressional Record during floor consideration thereof.

Sincerely,



Elijah E. Cummings  
Chairman

cc: The Honorable Nancy Pelosi, Speaker

The Honorable Jim Jordan, Ranking Member  
Committee on Oversight and Reform

The Honorable Doug Collins, Ranking Member  
Committee on the Judiciary

The Honorable Thomas J. Wickham, Parliamentarian

JERROLD NADLER, New York  
CHAIRMAN

DOUG COLLINS, Georgia  
RANKING MINORITY MEMBER

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Sixteenth Congress

May 6, 2019

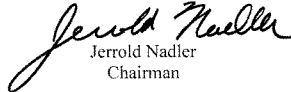
The Honorable Elijah Cummings  
Chairman  
Committee on Oversight and Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Cummings:

I am writing to acknowledge your letter dated May 6, 2019 responding to our request to your Committee that it waive any jurisdictional claims over the matters contained in H.R. 5, the "Equality Act," that fall within your Committee's Rule X jurisdiction. The Committee on the Judiciary confirms our mutual understanding that your Committee does not waive any jurisdiction over the subject matter contained in this or similar legislation, and your Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues within your Committee's jurisdiction.

I will ensure that this exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,

  
Jerrold Nadler  
Chairman

c: The Honorable Nancy Pelosi, Speaker

The Honorable Doug Collins, Ranking Member  
Committee on the Judiciary

The Honorable Jim Jordan, Ranking Member  
Committee on Oversight and Reform

The Honorable Thomas J. Wickham, Jr., Parliamentarian

MAXINE WATERS, CA  
CHAIRWOMAN

**United States House of Representatives**  
**Committee on Financial Services**  
2129 Rayburn House Office Building  
Washington, D.C. 20515

PATRICK MCHENRY, NC  
RANKING MEMBER

May 7, 2019

The Honorable Jerrold Nadler  
Chairman  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515-6415

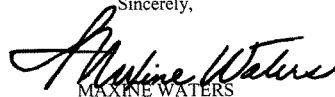
Dear Mr. Chairman:

I am writing concerning H.R. 5, the "Equality Act." After reviewing the provisions in H.R. 5 that fall within the Committee's jurisdiction, I agree to forgo formal consideration of the bill so that it may proceed expeditiously to the House Floor.

The Committee on Financial Services takes this action to forego formal consideration of H.R. 5 with our mutual understanding that, by foregoing formal consideration of H.R. 1585 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as this, or similar, legislation moves forward. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this, or similar, legislation and request your support for any such request.

I would appreciate your response to this letter confirming this understanding, and, while I understand that your letter to the Committee and my response will be included in the Committee report on H.R. 5, I would also ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during Floor consideration of H.R. 5.

Sincerely,

  
MAXINE WATERS  
Chairwoman

Cc: The Honorable Patrick McHenry

JERROLD NADLER, New York  
CHAIRMAN

DOUG COLLINS, Georgia  
RANKING MINORITY MEMBER

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Sixteenth Congress

May 6, 2019

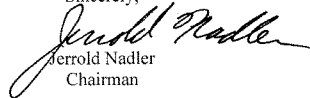
The Honorable Maxine Waters  
Chairwoman  
Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, DC 20515

Dear Chairwoman Waters:

I am writing to acknowledge your letter dated May 6, 2019 responding to our request to your Committee that it waive any jurisdictional claims over the matters contained in H.R. 5, the "Equality Act," that fall within your Committee's Rule X jurisdiction. The Committee on the Judiciary confirms our mutual understanding that your Committee does not waive any jurisdiction over the subject matter contained in this or similar legislation, and your Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues within your Committee's jurisdiction.

I will ensure that this exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,

  
Jerrold Nadler  
Chairman

c: The Honorable Doug Collins, Ranking Member  
Committee on the Judiciary

The Honorable Patrick McHenry, Ranking Member  
Committee on Financial Services

The Honorable Thomas J. Wickham, Jr., Parliamentarian

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May 9, 2019

The Honorable Jerrold Nadler  
 Chairman  
 Committee on the Judiciary  
 U.S. House of Representatives  
 2138 Rayburn House Office Building  
 Washington, DC 20515

Dear Chairman Nadler:

I write concerning H.R. 5, the *Equality Act*. This bill was primarily referred to the Committee on the Judiciary and secondarily to the Committee on Education and Labor. As a result of your having consulted with me concerning this bill generally, I agree to forgo consideration of the bill so that it may proceed expeditiously to the House floor.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 5, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and we will be appropriately consulted and involved as the bill or similar legislation moves forward so we may address any remaining issue within our Rule X jurisdiction.

In agreeing to forgo consideration, I respectfully request your support for the appointment of outside conferees from the Committee on Education and Labor should this bill or similar language be considered in a conference with the Senate.

I would also appreciate a response confirming this understanding and ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during floor consideration thereof.

As the Judiciary Committee presses on with this historical and critical legislation, I want to ensure that the analysis of the Committee on Education and Labor is preserved in the record and legislative history of the bill. As you know, on Tuesday, April 9, 2019, the House Committee on

The Honorable Jerrold Nadler  
May 9, 2019  
Page 2

Education and Labor's Subcommittee on Civil Rights and Human Services (Subcommittee) held a legislative hearing entitled "*The Equality Act (H.R. 5): Ensuring the Right to Learn and Work Free from Discrimination*" (Subcommittee Hearing). The Committee on Education and Labor has jurisdiction over H.R. 5's provisions dealing with education, employment, and certain health-related provisions.

The Majority's witnesses were: Ms. Kimberly Shappley, mother of an 8-year-old transgender girl (Kai), school nurse, and evangelical minister; Mr. Patrick Hedren, Vice President, Labor, Legal & Regulatory Policy, National Association of Manufacturers; and Ms. Sarah Warbelow, Legal Director, Human Rights Campaign. The Minority's witness was Mr. Lawrence Z. Lorber, Senior Counsel, Seyfarth Shaw LLP. Ms. Christine Back, Legislative Attorney with the Congressional Research Service, submitted written testimony for the record. The witnesses discussed how the *Equality Act* would impact individuals in the areas of education, employment, and health care. They also discussed the negative impact that the Trump Administration is having on LGBTQ individuals by rolling back federal anti-discrimination protections, as well as the misuse of the *Religious Freedom Restoration Act of 1993* (RFRA) as an excuse to avoid anti-discrimination laws, including the refusal to provide medical care.

#### Education

Witnesses at the Subcommittee Hearing presented recent data revealing that schools continue to be unsafe for LGBTQ students due to lack of federal protections, especially since Secretary DeVos rolled back Obama-era protections. Left to the states, the current patchwork of laws leaves vulnerable youths with limited or no protection against discrimination in their own schools. The *Equality Act* would extend protections to all schools receiving federal funds. Ms. Shappley detailed the negative impact that lack of protections in schools has had on her own faith and family. Arguments were raised that recognizing individuals according to their gender identity could (1) increase sexual assaults against girls and women in restrooms, and (2) provide a competitive advantage in sports. However, assaults in restrooms have historically been against the transgender person attempting to use the restroom, not the other way around; moreover, the evidence does not demonstrate that a person chooses to identify as transgender for the purpose of gaining an advantage in competitive sports or using a specific restroom.

The *Equality Act* does not amend Title IX of the *Education Amendments of 1972*. Discussion ensued regarding whether or not the exceptions to discrimination on the basis of sex included under Title IX—but not under Title VI—such as allowing same sex universities and organizations to continue operation, would still be applicable under the *Equality Act*. The availability of Title IX's exceptions may be unclear, both to a reviewing court and to the federal agencies that administratively enforce Title VI, should the *Equality Act* be enacted. Concern was also raised that unlike Title VI, Title IX is not amended by the *Equality Act* to include "sexual orientation and gender identity," and courts may therefore interpret Title IX to specifically exclude sexual orientation and gender identity under the category of "sex-based discrimination" even if the *Equality Act* becomes law.



The Honorable Jerrold Nadler  
 May 9, 2019  
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### Employment

Testimony presented at the Subcommittee Hearing by the National Association of Manufacturers (NAM) that stated, “amending the Civil Rights Act of 1964 to include explicit protections based on sexual orientation and gender identity is the right approach. It is sensible and would be less burdensome from a business or economic perspective than other alternative methods. Indeed, a federal standard would actually help manufacturers—many of which already provide these protections—by changing public expectations, enabling manufacturers to better attract and retain a talented workforce.” Under current law, Title VII makes it unlawful to discriminate “because of such individual’s race, color, religion, sex, or national origin,” but does not expressly address “sexual orientation” or “gender identity.” The Equal Employment Opportunity Commission (EEOC) has taken the position that existing sex discrimination provisions in Title VII protect lesbian, gay, bisexual, and transgender (LGBT) applicants and employees against employment bias. Furthermore, under the Obama Administration, the U.S. Department of Justice (DOJ) interpreted Title VII’s meaning of “sex” to include sexual orientation. While the EEOC still maintains this position, the Trump Administration rescinded an Obama-era 2014 DOJ guidance to limit the interpretation of Title VII’s prohibition on sex discrimination so as to not encompass discrimination based on gender identity or sexual orientation *per se*. The Subcommittee heard detailed testimony regarding the fact that U.S. circuit courts are split on whether Title VII includes sexual orientation or gender identity, and the *Equality Act* is intentionally drafted to clarify that it does. The NAM witness noted that data from employers who are already implementing such protections does not support the criticism that implementing H.R. 5 would be costly to employers.

### Health

Members of the Committee on Education and Labor explored the issue of discrimination in health care during the health care reform debate in 2009, and the Subcommittee Hearing again explored how discrimination against LGBTQ individuals has significant negative impacts on their health outcomes by being denied certain treatments or being refused services outright because of their sexual orientation or gender identity. Testimony was heard noting that the Obama Administration’s Office for Civil Rights (OCR) under the U.S. Department of Health and Human Services (HHS) issued regulations defining discrimination “on the basis of sex” to include discrimination on the basis of gender identity and termination of pregnancy, but it did not explicitly include sexual orientation. Additionally, it was noted that social services provided through HHS-funded programs have been administered, until recently, to prohibit the exclusion from HHS programs and services based on factors including gender identity and sexual orientation. However, a witness at the Subcommittee Hearing discussed the recent HHS waiver from broad nondiscrimination regulations to allow a provider in South Carolina to deny placement of foster children with prospective foster care parents based on the providers’ religion. The result is that the waiver may enable providers to discriminate against LGBTQ individuals and couples, as well as those whose religious beliefs differ from the provider’s.

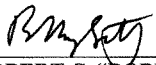
The Honorable Jerrold Nadler  
May 9, 2019  
Page 4

Religious Exemptions

Throughout the Subcommittee Hearing, religious beliefs and religious exemptions to anti-discrimination laws were cited as the basis for discrimination and harms against LGBTQ individuals. The Members and witnesses at the Subcommittee Hearing discussed whether religious exemptions could be used as a defense under the *Equality Act*. Current statutory protections within civil rights laws would remain in place, and existing limited exemptions would permit religious employers to continue to prefer employees of their own religion. Despite the fact that the RFRA was originally enacted to protect individuals and religious minorities who were being discriminated against, in recent years federal courts and the federal government have misapplied the RFRA by allowing the law to be used as a defense for those doing the discriminating based on their own religious views, morals, and beliefs.

Thank you for considering the analysis of the Committee on Education and Labor. I look forward to our collective work to getting this important legislation through the House of Representatives.

Very truly yours,

  
\_\_\_\_\_  
**ROBERT C. "BOBBY" SCOTT**  
Chairman

cc: The Honorable Nancy Pelosi, Speaker of the House  
The Honorable Thomas Wickham, Jr., Parliamentarian

Jerrold D. Nadler, New York  
Chairman

Doug Collins, Georgia  
Ranking Member

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Sixteenth Congress

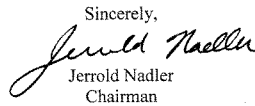
May 10, 2019

The Honorable Bobby Scott  
Chairman  
Committee on Education and Labor  
U.S. House of Representatives  
2176 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Scott:

I am writing to acknowledge your letter dated May 9, 2019 responding to our request to your Committee that it waive any jurisdictional claims over the matters contained in H.R. 5, the "Equality Act," that fall within your Committee's Rule X jurisdiction. The Committee on the Judiciary confirms our mutual understanding that your Committee does not waive any jurisdiction over the subject matter contained in this or similar legislation, and your Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues within your Committee's jurisdiction.

I will ensure that this exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,  
  
Jerrold Nadler  
Chairman

c: The Honorable Nancy Pelosi, Speaker  
  
The Honorable Doug Collins, Ranking Member  
Committee on the Judiciary  
  
The Honorable Thomas J. Wickham, Jr., Parliamentarian

## Dissenting Views

H.R. 5 would prohibit under federal law, in all circumstances, any acknowledgment of the reality of biological sex, and would allow anyone, at any time, to declare that he or she is a member of the opposite sex, or that he or she is a member of an undefinable, but legally protected, class of people sometimes referred to as “gender queer,” or “non-binary,” under an ideology not based on any science. It would amend the federal civil rights laws to require that every entity receiving any federal funding (including K-12 schools, colleges and universities, and health care plans) accede to the demands of a powerful lobby based on the lobby’s unscientific view that there is no such thing as biological sex. As has been reported, “As dozens of its clinics closed amid a dwindling U.S. abortion rate, Planned Parenthood has moved to diversify its business model by getting into transgender hormone therapy ... 17 states now have Planned Parenthood health centers that provide hormone therapy.”<sup>1</sup> The ramifications of H.R. 5 would be far-reaching, and unprecedented. They include:

requiring doctors to provide life-altering and often irreversible hormones and surgeries to adolescents, many with pre-existing psychological conditions having nothing to do with “gender dysphoria,” and many under the influence of social media and other peer pressures, without parental involvement;

requiring colleges and universities to facilitate gender-identity declarations under their own rules and programs, also without parental involvement;

prohibiting efforts to address pre-existing psychological conditions that have nothing to do with gender dysphoria when an adolescent insists on moving forward with a medical or other change to “gender identity”;

requiring insurers to provide coverage for sex-change operations, and any operations that attempt to reverse some of the effects of prior operations;

eliminating girls’ and women’s sports by requiring biological boys and men to compete in girls’ and women’s sports against girls and women;

the erasure of women and girls as a legally recognizable classification of persons worthy of civil rights protection, requiring that boys and men be allowed into their formerly private spaces, including dormitories, locker rooms, and bathrooms, and other spaces formerly reserved for girls and women;

denying religious people the protection of the bipartisan Religious Freedom Restoration Act, for the first time ever, requiring churches and other religious organizations to make their “gathering places” open to celebrations of gender-altering that are opposed by such religious organizations’ sincerely held religious beliefs.

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<sup>1</sup> <https://www.washingtontimes.com/news/2018/jan/3/planned-parenthood-enters-transgender-market/>

At the back of this document are selected examples of material harms to women and girls that have already been caused or exacerbated by existing “gender identity” laws and policies in various U.S. states and abroad, compiled by a leading feminist organization.

### What Parents Say

One of the most under-reported social phenomena in modern history is what has been called “rapid onset gender dysphoria,” which is uniquely based in social media and peer group pressure.

To take a step back, and focus on the science, instances in which people are born with genes other than those of males and females (a disorder of sexual development called “intersex”) is exceedingly rare. The final result of sex development in humans is unambiguously male or female over 99.98 percent of the time. “Intersex” is a term that encompasses a variety of congenital disorders of sex development that result in sex ambiguity and or a mismatch between sex chromosomes and appearance. These disorders occur in less than 0.02 percent<sup>2</sup> of all births, and have nothing to do with the current debate over “transgender.”<sup>3</sup> There remain are only two chromosomal outcomes related to sex. As described in the basic science television show “Bill Nye the Science Guy,” “Inside each of our cells are these things called chromosomes. And they control whether we become a boy or a girl. Your mom has two X chromosomes in all of her cells. And your dad has one X and one Y chromosome in each of his cells. Before you’re born, your mom gives you one of her chromosomes and your dad gives you one of his. Mom always gives you an X. And if dad gives you an X too, then you become a girl. But if he gives you his Y, then you become a boy. See, there are only two possibilities: XX, a girl, or XY, a boy.”<sup>4</sup> Wikipedia explains the “Sex and gender distinction” as follows: “The distinction between sex and gender differentiates a person’s biological sex (the anatomy of an individual’s reproductive system, and secondary sex characteristics) from that person’s gender, which can refer to either social roles based on the sex of the person (gender role) or personal identification of one’s own gender based on an internal awareness (gender identity).”<sup>5</sup>

Besides “intersex,” the American Psychiatric Association has developed criteria for determining whether someone has something called “gender dysphoria,” which it defines as a mental disorder meeting at least six of eight criteria set out in the fifth edition (2013) of the Diagnostic Statistical Manual (“DSM-5”). In the United States, the DSM serves as the principal authority for psychiatric diagnoses. The expected prevalence of transgender young adult individuals is 0.7%.<sup>6</sup>

<sup>2</sup> <http://www.leonardsax.com/how-common-is-intersex-a-response-to-anne-fausto-sterling/>

<sup>3</sup> As described in the article “Sex in Sport,” “Although there is some dispute at the margins, it is generally accepted that anomalies arise in one per 1,500 births; in other words, more than 99% of the time, an individual’s biological sex traits are fully concordant: their genetic sex (XX or XY), gonadal sex (hormonal activity), and phenotypic sex (external genitalia) are all either typically male or typically female, and the individual is identified accordingly at birth ... According to the World Health Organization, this genetic standard is the case in all but “a few births per thousand.” See <https://lcp.law.duke.edu/article/sex-in-sport-coleman-vol80-iss4/>, <https://www.who.int/genomics/gender/en/index1.html>

<sup>4</sup> <https://www.youtube.com/watch?v=jJesKhVKzY8>

<sup>5</sup> [https://en.wikipedia.org/wiki/Sex\\_and\\_gender\\_distinction#Transgender\\_and\\_genderqueer](https://en.wikipedia.org/wiki/Sex_and_gender_distinction#Transgender_and_genderqueer)

<sup>6</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0202330#pone.0202330.ref008>

Beyond “intersex” and the DSM’s criteria for “gender dysphoria,” there is only “gender identity” ideology. “Gender identity” is based on no science at all.

With that as background, physician Lisa L. Littman, a researcher at the School of Public Health at Brown University, recently published a seminal study in the peer-reviewed journal PLoS One. The study, “Rapid-onset gender dysphoria in adolescents and young adults: A study of parental reports.”<sup>7</sup> was the first of its kind in reporting detailed descriptions by parents of their children’s “transgender” experiences. All these parents love their children dearly. The results of the study were startling, as they provided clear evidence that the significant majority of instances of “gender identity” changes result not from a medical professional diagnosis of gender dysphoria, but from children’s online social media interactions and other social group dynamics.

As described by Dr. Littman:

There were 256 parent-completed surveys that met study criteria ... Many (62.5%) of the AYAs [adolescent and young adults] had been diagnosed with at least one mental health disorder or neurodevelopmental disability prior to the onset of their gender dysphoria ...

Parents describe a process of immersion in social media, such as “binge-watching” Youtube transition videos and excessive use of Tumblr, immediately preceding their child becoming gender dysphoric ...

Concern has been raised that ... exposure to internet content that is uncritically positive about transition may intensify these beliefs, and that those teens may pressure doctors for immediate medical treatment ...

The research uncovered common online instructions for lying to parents and medical professionals:

Instructions on lying	<ul style="list-style-type: none"> <li>• “TL;DR find out what they want to hear if they’re gonna give you T and then tell them just that. It’s about getting treatment, not about being true to those around you. It’s not their business and a lot of time doctors will screw stuff up for you.”<sup>8</sup></li> <li>• “...Get a story ready in your head, and as suggested keep the lie to a minimum. And only for stuff that can’t be verified. Like how you were feeling, but was too afraid to tell anyone including your family.”<sup>9</sup></li> <li>• “I’d also look up the DSM for the diagnostic criteria for transgender and make sure your story fits it, assuming your psych follows it.”<sup>10</sup></li> </ul>
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<sup>7</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0202330>

As described by Dr. Littman, “The DSM 5 criteria for gender dysphoria in children consist of eight indicators of gender dysphoria. To meet criteria for diagnosis, a child must manifest at least six out of eight indicators ...”

#### Gender Dysphoria in Children

#### 302.6 (F64.2)

- 
- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 month's duration, as manifested by at least six of the following (one of which must be Criterion A1):
1. A strong desire to be of the other gender or an insistence that one is the other gender (or some alternative gender different from one's assigned gender).
  2. In boys (assigned gender), a strong preference for cross-dressing or simulating female attire; or in girls, (assigned gender), a strong preference for wearing only typical masculine clothing and a strong resistance to the wearing of typical feminine clothing.
  3. A strong preference for cross-gender roles in make-believe play or fantasy play.
  4. A strong preference for the toys, games, or activities stereotypically used or engaged in by the other gender.
  5. A strong preference for playmates of the other gender.
  6. In boys (assigned gender), a strong rejection of typically masculine toys, games and activities and a strong avoidance of rough-and-tumble play; or in girls (assigned gender), a strong rejection of typically feminine toys, games and activities.
  7. A strong dislike of one's sexual anatomy.
  8. A strong desire for the primary and/or secondary sex characteristics that match one's experienced gender.
- B. The condition is associated with clinically significant distress or impairment in social, school, or other important areas of functioning.
- 

Astonishingly, Dr. Littman found that “**none of the AYAs [adolescents and young adults] described in this study would have met diagnostic criteria for gender dysphoria in childhood.** In fact, the vast majority (80.4%) had zero indicators from the DSM-5 diagnostic criteria for childhood gender dysphoria with 12.2% possessing one indicator, 3.5% with two indicators, and 2.4% with three indicators ...

The AYAs who were the focus of this study had many comorbidities and vulnerabilities predating the onset of their gender dysphoria, including psychiatric disorders, neurodevelopmental disabilities, trauma, non-suicidal self-injury (NSSI), and difficulties coping with strong or negative emotions ...

The average age of announcement of a transgender-identification was 15.2 years of age (range 10–21). Most of the parents (80.9%) answered affirmatively that their child's announcement of being transgender came “out of the blue without significant prior evidence of gender dysphoria.” ...

The following case summaries were selected to illustrate peer, trauma, and psychiatric contexts that might indicate more complicated clinical pictures.

- A 12-year-old natal female was bullied specifically for going through early puberty and the responding parent wrote “as a result she said she felt fat and hated her breasts.” She learned online that hating your breasts is a sign of being transgender. She edited her diary

(by crossing out existing text and writing in new text) to make it appear that she has always felt that she is transgender.

- A 14-year-old natal female and three of her natal female friends were taking group lessons together with a very popular coach. The coach came out as transgender, and, within one year, all four students announced they were also transgender.
- A natal female was traumatized by a rape when she was 16 years of age. Before the rape, she was described as a happy girl; after the rape, she became withdrawn and fearful. Several months after the rape, she announced that she was transgender and told her parents that she needed to transition ...

One respondent said, “Great increase in popularity among the student body at large. Being trans is a gold star in the eyes of other teens.” Another respondent explained, “not so much ‘popularity’ increasing as ‘status’ ... also she became untouchable in terms of bullying in school as teachers ... are now all at pains to be hot on the heels of any trans bullying.” ...

There were two unrelated cases with similar trajectories where the AYAs spent some significant time in a different setting, away from their usual friend group, without access to the internet. Parents described that these AYAs made new friendships, became romantically involved with another person, and during their time away concluded that they were not transgender. In both cases, the adolescents, rather than face their school friends, asked to move and transfer to different high schools. One parent said that their child, “...couldn’t face the stigma of going back to school and being branded as a fake or phony.... Or worse, a traitor or some kind of betrayer...[and] asked us if we could move.” ... Both families were able to relocate and both respondents reported that their teens have thrived in their new environments and new schools. One respondent described that their child expressed relief that medical transition was never started and felt there would have been pressure to move forward had the family not moved away from the peer group ...

AYAs had received online advice including ... that if their parents were reluctant to take them for hormones that they should use the “suicide narrative” (telling the parents that there is a high rate of suicide in transgender teens) to convince them (20.7%); and that it is acceptable to lie or withhold information about one’s medical or psychological history from a doctor or therapist in order to get hormones/get hormones faster (17.5%) ... Another parent disclosed, “The threat of suicide was huge leverage. What do you say to that? It’s hard to have a steady hand and say no to medical transition when the other option is dead kid. She learned things to say that would push our buttons and get what she wanted and she has told us now that she learned that from trans discussion sites.” ...

Another respondent described the online influence as part of a different question, “I believe my child experienced what many kids experience on the cusp of puberty—uncomfortableness!—but there was an online world at the ready to tell her that those very normal feelings meant she’s in the wrong body.” ...



Specifically, parents reported that, after “coming out,” their children exhibited a worsening of their mental well-being ...

Parents were asked if their child had seen a gender therapist, gone to a gender clinic, or seen a physician for the purpose of beginning transition and 92 respondents (36.2%) answered in the affirmative ... For parents who knew the content of their child’s evaluation, 71.6% reported that the clinician did not explore issues of mental health, previous trauma, or any alternative causes of gender dysphoria before proceeding ... Despite all of the AYAs in this study sample having an atypical presentation of gender dysphoria (no gender dysphoria prior to puberty), 23.8% of the parents who knew the content of their child’s visit reported that the child was offered prescriptions for puberty blockers and/or cross-sex hormones at the first visit ... One participant said, “When we phoned the clinic, the doctor was hostile to us, told us to mind our own business. Our family doctor tried to reach our son’s new doctor, but the trans doctor refused to speak with her.” ...

Another respondent offered, “He is rewriting his personal history to suit his new narrative.” And a fourth respondent described, “[Our] son has completely made up his childhood to include only girlfriends and dressing up in girls clothes and playing with dolls, etc. This is not the same childhood we have seen as parents.” ...

And a third parent said, “I overheard my son boasting on the phone to his older brother that ‘the doc swallowed everything I said hook, line and sinker. Easiest thing I ever did.’” ...

Another parent described, “What does concern me is that the people she talked to seemed to have no sense of professional duties, but only a mission to promote a specific social ideology.” ...

### What the Evidence Counsels

Following her reports of parental testimonials, Dr. Littman concludes her article with the following observations and recommendations, all of which would be preempted by federal legislation requiring that doctors and hospitals accede to adolescent declarations of “gender identity” and provide demanded drugs and medical procedures accordingly:

One of the most compelling findings supporting the potential role of social and peer contagion in the development of a rapid onset of gender dysphoria is the cluster outbreaks of transgender-identification occurring in friendship groups. The expected prevalence of transgender young adult individuals is 0.7%. Yet, more than a third of the friendship groups described in this study had 50% or more of the AYAs in the group becoming transgender-identified in a similar time frame, a localized increase to more than 70 times the expected prevalence rate. **This is an observation that demands urgent further investigation ...**

There are many insights from our understanding of peer contagion in eating disorders and anorexia that may apply to the potential peer contagion of rapid-onset gender dysphoria. Just as friendship cliques can set the level of preoccupation with one's body, body image, weight, and techniques for weight loss, so too may friendship cliques set a level of preoccupation with one's body, body image, gender, and the techniques to transition. The descriptions of pro-anorexia subculture group dynamics where the thinnest anorexics are admired while the anorexics who try to recover from anorexia are ridiculed and maligned as outsiders resemble the group dynamics in friend groups that validate those who identify as transgender and mock those who do not. And the pro-eating-disorder websites and online communities providing inspiration for weight loss and sharing tricks to help individuals deceive parents and doctors may be analogous to the inspirational YouTube transition videos and the shared online advice about manipulating parents and doctors to obtain hormones ...

**The conclusion of this exploratory study is that clinicians need to be very cautious before relying solely on self-report when AYAs seek social, medical or surgical transition. Adolescents and young adults are not trained medical professionals ...**

The patient's history being significantly different than their parents' account of the child's history should serve as a red flag that a more thorough evaluation is needed and that as much as possible about the patient's history should be verified by other sources. The findings that the majority of clinicians described in this study did not explore trauma or mental health disorders as possible causes of gender dysphoria or request medical records in patients with atypical presentations of gender dysphoria is alarming ...

Research needs to be done to determine if affirming a newly declared gender identity, social transition, puberty suppression and cross-sex hormones can cause an iatrogenic persistence of gender dysphoria in individuals who would have had their gender dysphoria resolve on its own and whether these interventions prolong the duration of time that an individual feels gender dysphoric before desisting ...

The logic of the anorexia analogy is powerful: If a very thin anorexic girl, who may have pre-existing anxiety or depression or other issues related to a feeling of "not fitting in," went to the doctor and said she thought she was overweight — that is, she self-identified as overweight — would anyone think it made sense to affirm that self-identification, and to prescribe weight loss pills, and then liposuction to help the girl "feel more comfortable in her own body," especially when doing such things could cause irreversible harm? Yet the affirmation of gender identity self-identification, with serious risks of the same terrible results, would be required under H.R. 5.

Other testimonials by mothers about their children's horrible experiences with "transgender" procedures were provided by Jennifer Chavez, a board member of the Women's Liberation Front, at a panel discussion earlier this year entitled "[The Inequality of the Equality Act: Concerns from the Left](https://www.heritage.org/event/the-inequality-the-equality-act-concerns-the-left),"<sup>8</sup> which is well worth watching, as it features feminists who understand the grave threat H.R. 5 poses to equality for biological women.

<sup>8</sup> <https://www.heritage.org/event/the-inequality-the-equality-act-concerns-the-left>

More details from the parental testimonials presented at that panel discussion can be found [here](#).<sup>9</sup> Parents around the country, many of whom are centrist Democrats, are appalled by their party's capitulation to a drug lobby and ideology that promotes child abuse. They include these stories:

I was shocked when my thirteen-year-old daughter told me she was really my transgender son. She had no masculine interests and hated all sports. But as a smart, quirky teen on the autism spectrum, she had a long history of not fitting in with girls.

Where did she get the idea she was transgender? From a school presentation—at a school where over 5 percent of the student body called themselves trans or nonbinary, and where several students were already on hormones, and one had a mastectomy at the age of sixteen. In my daughter's world—in real life and online—transgender identities are common, and hormones and surgeries are no big deal ... I have nowhere to go for proper help. Therapists are actively trained and socially pressured not to question these increasingly common identities. In Washington, DC, and many states with so-called conversion therapy bans, questioning a child's belief that she is of the opposite sex is against the law. I have been living this nightmare for over four years ... Parents like me must remain anonymous to maintain our children's privacy, and because we face legal repercussions if our names are revealed. Parents who do not support their child's gender identity risk being reported to Child Protective Services and losing custody of their children. In New Jersey, the Department of Education officially encourages schools to report such parents.

Meanwhile, the media glamorize and celebrate trans-identified children while ignoring stories like mine. I have written to well over 100 journalists, begging them to write about what is happening to kids. I wrote to my representative and senators, but have been ignored by their staff. My online posts about my daughter's story have been deleted and I have been permanently banned in an online forum. As a lifelong Democrat, I am outraged by my former party and find it ironic that only conservative news outlets have reported my story without bias or censorship.

We parents are ignored and vilified, while our children are suffering in the name of inclusivity and acceptance. I hope that some open-minded Democratic lawmakers will wake up to the fact that they are complicit in harming vulnerable kids. I hope that they ask themselves this question: Why are physicians medicalizing children in the name of an unproven, malleable gender identity? And why are lawmakers enshrining "gender identity" into state and federal laws?

\* \* \* \* \*

My daughter, at age fourteen, spontaneously decided that she is actually a male. After suffering multiple traumatic events in her life and spending a large amount of time on the internet, she announced that she was "trans." Her personality changed almost overnight, and she went from being a sweet, loving girl to a foul-mouthed, hateful "pansexual male." At first, I thought she was just going through a phase. But the more I tried to reason with her, the more she dug her heels in. Around this time, she was diagnosed with ADHD, depression, and anxiety. But mental health professionals seemed mainly interested in helping her process her new identity as a male and convincing me to accept the notion that my daughter is actually my son.

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<sup>9</sup> <https://www.thepublicdiscourse.com/2019/02/49686/>

At age sixteen, my daughter ran away and reported to the Department of Child Services that she felt unsafe living with me because I refused to refer to her using male pronouns or her chosen male name. Although the Department investigated and found she was well cared for, they forced me to meet with a trans-identified person to “educate” me on these issues. Soon after, without my knowledge, a pediatric endocrinologist taught my daughter—a minor—to inject herself with testosterone. My daughter then ran away to Oregon where state law allowed her—at the age of seventeen, without my knowledge or consent—to change her name and legal gender in court, and to undergo a double mastectomy and a radical hysterectomy.

My once beautiful daughter is now nineteen years old, homeless, bearded, in extreme poverty, sterilized, not receiving mental health services, extremely mentally ill, and planning a radial forearm phalloplasty (a surgical procedure that removes part of her arm to construct a fake penis).

The level of heartbreak and rage I am experiencing, as a mother, is indescribable. Why does Oregon law allow children to make life-altering medical decisions? As a society, we are rightly outraged about “female circumcision.” Why are doctors, who took an oath to first do no harm, allowed to sterilize and surgically mutilate mentally ill, delusional children?

\* \* \* \* \*

In August of 2017, our seventh grade daughter came home from sleepaway camp believing she was a boy. She had a new vocabulary and a strong desire to change her name and pronouns. We never anticipated that we needed to ask the camp if she was going to be in a cabin with girls who were socially transitioning to live as boys.

We suspect that our daughter assumed that since my wife and I are lesbians, and liberal in our politics, we would support this new identity. We may be lesbians, but we are not confused about biology. She tried to convince us with a very scripted explanation that she had always “felt” like a boy. But we had never once seen or heard from her any evidence of this “feeling.” We listened to her, gave her the space to talk about her feelings, and tried hard not to convey to her that we were utterly horrified by this revelation.

As we began to try to find information to make sense of this, we found evidence of a social contagion all over the internet. YouTube, Instagram, Twitter, and Reddit supplied a how-to guide and handbook on transitioning, complete with trans stars like Jazz Jennings and Riley J. Dennis, many with thousands of followers.

We are in no way out of the woods. Some parents dealing with this issue view us as lucky because she is so young, giving us and her more time to work through her discomfort. Maybe we will be, but we are facing this ever-growing storm of a social contagion without any help from the mainstream media or the negligent FDA, not to mention the pathetic capitulation of our physicians and mental health professionals.

\* \* \* \* \*

My daughter spent her childhood happily engaging in what one would call typical, girly activities, with no gender-stereotyping encouragement from us at all. Everything changed after she went to college.

The environment of her new city and university celebrated transgender identities. She began speaking to us by phone of being “non-binary,” which I naïvely took to mean something like bisexual. Anxiety and depression then overwhelmed her. She dropped out and moved back to our home town, where she resumed psychiatric care for preexisting mental-health conditions.

Her appearance, always feminine, changed dramatically. A shaved head, boys' clothes, and obvious unhappiness were now her camouflage from the world. She went from non-binary to claiming that she was really a boy.

She parroted online advice: "I always knew something was wrong but didn't have words for it until I started watching videos on Tumblr and YouTube. When I was little, I was afraid to tell you that I didn't feel right."

This narrative matched nothing about her past—but I was still naïve. Because her psychiatrist did not consider her to be transgender, I assumed she would be unable to get a referral for the testosterone she was determined to start.

I was wrong. In only one visit, and with just a little bit of blood work, Planned Parenthood will cheerfully enable young women and men to pursue their "authentic" selves through cross-sex hormones. All that's needed is a few bucks and signing a form that the risks have been disclosed and understood.

That is the route my daughter took at the tender age of twenty, bypassing her psychiatrist altogether.

My husband wrote to Planned Parenthood, explaining her mental-health history and providing her doctor's name and telephone number. Planned Parenthood's lawyer wrote back curtly that they presume anyone over eighteen is capable of giving informed consent.

No matter what anyone thinks of Planned Parenthood's other services, the fact that they will instantly prescribe powerful hormones with many unknown long-term effects—especially to people with underlying mental-health issues—should shock one's conscience. People need to know that this is Planned Parenthood's new line of business.

\* \* \* \* \*

At the age of seventeen, after immersion on Tumblr and after two of her oldest and closest friends in high school declared themselves transgender, our daughter told us that she is "really a guy." Her therapist diagnosed her as high-functioning on the autism spectrum. The therapist was also quite clear that we would "lose all control over the medicalization" once our daughter turned eighteen.

As a federal employee, I could not find health insurance that *does not* cover hormones for self-declared gender dysphoria.

My daughter is now twenty, has been on testosterone for a year, and has made an appointment for a consult about a double mastectomy—all this, even though she can't legally buy an alcoholic drink. I can't get any answers from doctors in response to my questions and concerns about the risks of these "treatments." I get no answers from mental health professionals about what makes this treatment appropriate ... or what makes my daughter different from those young women who are "no longer trans" and have de-transitioned, sometimes after being on hormones for years. Having to watch these adults enable my daughter to do this with no medical science to back it up is a scenario that I never dreamed any parent would have to face, at least not in the United States. But this is our reality now—a reality that the mainstream media won't touch.

Other parent testimonials are available on the [Kelsey Coalition](https://www.kelseycoalition.org/) website,<sup>10</sup> and that coalition's opposition to H.R. 5 is described [here](https://www.kelseycoalition.org/Projects/Remove-%22Gender-Identity%22-from-the-Equality-Act).<sup>11</sup> Katherine Cave (not her real name) is a mother who runs the site, and her own testimonial can be found [here](https://www.thepublicdiscourse.com/2019/01/48640/),<sup>12</sup> in which she says:

The number of people throughout the western world seeking to medically alter their bodies to conform with their “gender identities” has grown, with the most dramatic increases reported among teen girls and young women. In less than a decade, the number of girls seeking treatment in the UK rose by *more than 4,000 percent*, prompting a government investigation.

Growing evidence shows that many of these new identities among young people are the result of social contagion, social media influences, and/or underlying comorbidities, including Autism Spectrum Disorder.

Some kids learn of these identities at school. An increasing number of districts require that students be taught that their sex was “assigned” to them at birth, but they alone decide their “gender identity.” Once students adopt a new “gender identity,” many schools will change their names and pronouns without notifying their parents. Teachers who refuse to comply with these ideologically based mandates are at risk of losing their jobs. The Board of Education in New Jersey has gone so far as to actively encourage teachers and administrators to report parents who question their children's new “gender identities.”

Other children have learned about “gender identities” on the internet, where YouTube videos glamorize young women with mastectomies and Instagram is filled with pictures of kids posing with hormones. When parents try to understand the reason for their children's new identity, or try to get help for their child, it is nearly impossible. Therapists are trained to affirm and ignore signs of social contagion or underlying issues like autism. Enshrining “gender identity” into federal law will make getting proper help for children even more difficult.

Researchers have cautioned that young people with “gender dysphoria” present in the context of “wider identity confusion, severe psychopathology, and considerable challenges in the adolescent development.” Moreover, it is impossible for clinicians to predict whether young people's “gender identities” will persist into adulthood. Yet the current treatment for this poorly understood and increasingly common phenomenon consists of puberty blockers and cross-sex hormones. Despite the bold assertions of some physicians and medical associations that this hormonal protocol is psychologically necessary, it is risky and experimental. Indeed, puberty blockers and hormones are known to cause serious side effects, including infertility.

Dr. Johanna Olson-Kennedy, the director of the largest pediatric gender clinic in the U.S., refers girls as young as thirteen years old for mastectomies, all on the basis of a self-

<sup>10</sup> <https://www.kelseycoalition.org/>

<sup>11</sup> <https://www.kelseycoalition.org/Projects/Remove-%22Gender-Identity%22-from-the-Equality-Act>

<sup>12</sup> <https://www.thepublicdiscourse.com/2019/01/48640/>

proclaimed identity that cannot be objectively proven and is likely to change over time. Some clinicians use manipulative tactics to encourage parental compliance with medical treatment. Many stories of transition regret are emerging, but only time will tell the full extent of these medical harms.

The Equality Act specifically prohibits discrimination based on gender identity in any “establishment that provides health care.” Does this mean that therapists and physicians would risk lawsuits if they do not automatically affirm children’s “gender identities”? Would they be legally prohibited from exploring other causal factors? How would children receive proper therapeutic support to explore underlying reasons why they want to appear as the opposite sex if therapists are legally compelled to affirm them? If “gender identity” becomes a federally protected class, will physicians be legally allowed to refuse to provide untested, risky hormone treatments to trans-identifying children? Or might they feel pressured simply to accept a child’s identity and prescribe questionable medical treatment just to avoid a potential lawsuit? How will physicians uphold their most sacred oath to “First, Do No Harm” when doing so will put them at risk of being sued?

As explained by one parent in the Kelsey Coalition:<sup>13</sup>

The current standard of treatment promoted by medical and psychological associations is called “affirmative care.” While this sounds nice, affirmative care leads directly to putting children on the path to medical transition with little chance of turning back. Let me explain to you how this works. If you take your child to a clinic to seek help, affirmative care means the therapist must follow the child’s lead. The professionals must accept a child’s professed gender identity. In fact, this is the law in many states. Under “conversion therapy” bans, questioning a child’s professed gender identity is now illegal. So, if a little boy is 5 years old and believes he is the opposite sex, affirmative care means going along with his beliefs. Parents are encouraged to refer to him as their “daughter” and let him choose a feminine name. Teachers are told to let him use the girls’ bathroom at school. Therapists will reassure parents that social transition is harmless and reversible. Is it really harmless to tell a child who still believes in the tooth fairy that he is the opposite sex? Isn’t it quite likely that this child is just confused? If a 10-year-old girl is uncomfortable with her developing body and suddenly insists she is a boy, affirmative care means blocking this girl’s puberty with powerful drugs ...

I am speaking out because I love my daughter. And it is because of her that I know what I have told you is true. She has been a victim of “gender affirming” medical procedures, and I was powerless to stop doctors from harming her. Someday, I hope she will realize that I’m advocating for her health, and for her future. She has incredible courage, strength, and tenacity, as do many transgender-identifying youth. We, as parents of these young people, advocate for our children because we love them. Many of us are going through unimaginable grief because we love them. We are standing together, and we will never back down, because we love them. We parents have formed our own support

<sup>13</sup> <https://www.dailysignal.com/2019/03/31/my-daughter-went-transgender-i-was-powerless-to-stop-doctors-from-harming-her/>

groups and a new coalition—the Kelsey Coalition—to help spread this message and change the systems that failed our children. Will you please stand with us?

And several young women who de-transitioned tell their stories here.<sup>14</sup>

**H.R. 5 will Force Schools to Teach and Affirm Sex Education  
that Includes Self-Affirming Gender-Identity**

H.R. 5, in applying to all schools that receive federal funding, will require schools to teach and affirm sex education including self-affirming “gender identity.” Already, activists are seeking to teach kids that their sex is somehow fluid, and that schools need to affirm any self-declared “gender identity” based solely on kids’ say-so. As a former middle and high school teacher whose children attend Arlington, Virginia, public schools, wrote in the *Washington Post*<sup>15</sup> recently about her own experience:

[A]n Arlington Gender Identity Allies advocate lamented that a planned reading of “I Am Jazz,” a storybook about a transgender student, had been scuttled at Patrick Henry Elementary School because of concerns over parents’ reactions. The speaker vowed that the event would happen. Three days later, Ashlawn Elementary hosted a transgender activist who read the book to 5-year-olds, introducing the idea that “anyone can be anything,” as one kindergartner who absorbed the lesson summarized.

Ashlawn parents were notified less than a week ahead. The letter offered no opt-out, buried the book’s topic in its middle paragraph and went out only in English, although 27 percent of Ashlawn’s students are Hispanic or Asian. All other communication goes home bilingual. APS seems comfortable employing furtive tactics to slip into classrooms controversial topics to which parents might object.

In truth, APS is part of a larger set of trials to which I as a parent have not consented for my children. David Aponte, co-chair of the local chapter of GLSEN, formerly the Gay, Lesbian and Straight Education Network, said last year that Northern Virginia and California have served as laboratories for policies regarding lesbian, gay, bisexual and transgender issues.

Arlington, our children are being experimented on.

No person of conscience would object to a policy of nondiscrimination and support for all students. In fact, that policy exists: In accordance with School Board Policy J-2, APS prohibits “discrimination on the basis of race . . . gender identity or expression, and/or disability.”

But the working draft of the policy implementation procedure seeks to expose kids at a young age to transgender-themed materials, as one advocate affirmed at the February

<sup>14</sup> <https://www.nationalreview.com/corner/former-transgender-teens-speak-out-listen-here/>

<sup>15</sup> [https://www.washingtonpost.com/opinions/local-opinions/gender-politics-dont-belong-in-the-classroom-but-title-ix-protections-do/2019/04/05/1cd1a156-5561-11e9-9136-f8e636f1f6df\\_story.html?utm\\_term=.7db0200f4546](https://www.washingtonpost.com/opinions/local-opinions/gender-politics-dont-belong-in-the-classroom-but-title-ix-protections-do/2019/04/05/1cd1a156-5561-11e9-9136-f8e636f1f6df_story.html?utm_term=.7db0200f4546)



meeting. It would erode parents' rights over their children's education, corrode Title IX protections for girls and risk convincing healthy, normally developing boys and girls that their bodies are wrong and must be altered with hormones and be vandalized by surgical instruments.

If this draft policy implementation procedure were adopted:

- Every child in APS would be taught transgender theory.
- If a boy said he felt like a girl, he would gain access to the girls' restrooms, locker rooms and changing areas. No adult may question him.
- Said boy could also sleep in the girls' quarters on school trips — and other students in the room could not be removed at a parent's request.
- Said boy would get to compete in girls' sports. (If your daughter hoped for an athletic scholarship, start working on Plan B.)
- Teachers and staff members, regardless of opinions or convictions, would be required to teach and promote transgender ideas.

Unquestioning affirmation of cross-gender identification is the only policy approved by GLSEN and the Human Rights Campaign Foundation, the funding and policy arm of the LGBTQ lobby. But the data does not back them up.

"Sexuality and Gender: Findings From the Biological, Psychological & Social Sciences," a report and summary of research related to sexual orientation and gender, concludes that "some of the most frequently heard claims about sexuality and gender are not supported by scientific evidence."

Without clear, unbiased, peer-reviewed research into the efficacy and validity of policies related to gender dysphoria, any policy adoption is experimental at best. A 2011 study from Sweden, one of the most transgender-supportive countries in the world, admits that after decades of support for social transition and sex reassignment, no positive change has occurred regarding rates of mortality, suicide and psychiatric morbidity.

This policy is not about protections for gender-dysphoric students, who make up only an estimated 0.7 percent of the school population, or about 200 of 28,000 students in Arlington Public Schools. This policy mandates the promotion of transgender politics ... Parents — not school systems — should hold authority over what their children learn about sexuality and gender and when.

That "model policy" Arlington Public Schools sought to adopt states that "The model policy is based on the basic principle that only an individual can determine their own gender

identity ... Schools should avoid requiring medical, legal, or other ‘proof’ in order to respect a student’s gender identity.”<sup>16</sup> H.R. 5 would mandate that educational policy nationwide.



Sarah McBride, a spokeswoman with the Human Rights Campaign, left, and Lily Eskelsen García, president of the National Education Association, read to kindergartners at Ashlawn Elementary School in Arlington on Feb. 28. (Debbie Truong/The Washington Post)

Indeed, the “Jazz” referenced in the article is reality television star “Jazz Jennings.” As described by a parent in an article entitled “My Daughter Identified as Transgender. I Was Powerless to Stop Doctors From Harming Her”:

Jazz Jennings is an example of affirmative care. His life has been documented in the TV drama “I Am Jazz.” Jazz was born a boy, but raised as a girl since the age of 5. He was treated hormonally since age 11. Last year, at the age of 17, Jazz had surgery to remove his penis and create a simulated vagina out of his stomach lining. After surgery, Jazz’s wounds began separating and a blood blister began to form. An emergency surgery was performed. According to Jazz’s doctor: “As I was getting her on the bed, I heard something go pop. When I looked, the whole thing had split open.” This is a medical experiment on a child that has been playing out on television for the past 12 years. No one knows what might happen next.<sup>17</sup>

<sup>16</sup> [https://www.glsen.org/sites/default/files/Model-School-District-Policy-on-Transgender-and-Gender-Nonconforming-Students-GLSSEN\\_0.pdf](https://www.glsen.org/sites/default/files/Model-School-District-Policy-on-Transgender-and-Gender-Nonconforming-Students-GLSSEN_0.pdf)

<sup>17</sup> <https://www.dailysignal.com/2019/03/31/my-daughter-went-transgender-i-was-powerless-to-stop-doctors-from-harming-her/>

Indeed, according to Jazz, “My libido’s still basically nowhere,” [Jazz] admitted ... Back in July 2017, she shared on the show that her libido is a lot lower than most teens because of the hormone blockers she’d been taking ... “Jazz does not know what an orgasm is and it’s very important when expressing intimacy,” [Dr. Bowers, Jennings’ surgeon] said in the new episode. “And although it is not something that’s going to delay surgery, it’s not going to be any easier for her to have an orgasm after surgery.”<sup>18</sup>

Whereas sex education classes are designed to focus on basic biological and reproductive differences between males and females, H.R. 5 would impose nationwide, under federal law, the Human Rights Campaign’s program to force schools to “address [LGBTQ] identities, behaviors and experiences,” requiring classroom discussion of “fluid gender” and sexual practices having nothing to do with the biology of human reproduction.<sup>19</sup>

#### **H.R. 5 Would Require Doctors and Insurance Companies to Deliver Expensive Hormone and Other Treatments to Kids Who Demand Them, Leading to Infertility Later in Life**

In 48 of the 50 states, minors can’t legally get tattoos – something that’s reversible to some extent -- or if they can, they must have parental consent first.<sup>20</sup> Yet H.R. 5 would require doctors and insurance companies to deliver expensive hormone and other treatments to kids who demand them, leading to irreversible health consequences, including the inability to have children later in life.

According to a report by PBS’s FRONTLINE series:<sup>21</sup>

[T]he use of puberty blockers to treat transgender children is what’s considered an “off label” use of the medication — something that hasn’t been approved by the Food and Drug Administration. And doctors say their biggest concern is about how long children stay on the medication, because **there isn’t enough research into the effects of stalling puberty at the age when children normally go through it** ... Another area where doctors say there isn’t enough research is the impact that suppressing puberty has on brain development.

“The bottom line is we don’t really know how sex hormones impact any adolescent’s brain development,” Dr. Lisa Simons, a pediatrician at Lurie Children’s, told FRONTLINE. “We know that there’s a lot of brain development between childhood and adulthood, but it’s not clear what’s behind that.” What’s lacking, she said, are specific studies that look at the neurocognitive effects of puberty blockers ...

**The physical changes that hormones bring about are irreversible**, making the decision more weighty than taking puberty blockers. Some of the known side effects of

<sup>18</sup> <https://www.lifeandstylemag.com/posts/jazz-jennings-chats-sexual-stuff-with-doctors-before-her-big-surgery/>

<sup>19</sup> [https://assets2.hrc.org/files/assets/resources/HRC-SexHealthBrief-2015.pdf?\\_ga=2.187689067.256899605.1554829058-746164283.1554829058](https://assets2.hrc.org/files/assets/resources/HRC-SexHealthBrief-2015.pdf?_ga=2.187689067.256899605.1554829058-746164283.1554829058)

<sup>20</sup> [https://en.wikipedia.org/wiki/Legal\\_status\\_of\\_tattooing\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Legal_status_of_tattooing_in_the_United_States)

<sup>21</sup> <https://www.pbs.org/wgbh/frontline/article/when-transgender-kids-transition-medical-risks-are-both-known-and-unknown/>

hormones include things that might sound familiar: acne and changes in mood. Patients are also warned that they may be at higher risk for heart disease or diabetes later in life. The risk of blood clots increases for those who start estrogen. And the risk for cancer is an unknown, but it is included in the warnings doctors give their patients.

**Another potential dilemma facing transgender children, their families and their doctors is this: Taking cross hormones can reduce fertility. And there isn't enough research to find out if it is reversible or not. So when children make the decision to start taking hormones, they have to consider whether they ever want to have biological children.**

Just think of that statement for a moment: “**when children make the decision to start taking hormones, they have to consider whether they ever want to have biological children.**” What child could possibly make an informed decision about whether they’ll want to have their own children later in life? Parents have a responsibility to look out for the long-term best interests of their children, and H.R. 5 would make that illegal under federal law.

In England, an Oxford professor found that England’s national health service had covered up findings of negative impacts of puberty blockers on children, findings that showed after a year of treatment with puberty blockers, “a significant increase” was found in patients who had been born female self-reporting to staff that they “deliberately try to hurt or kill myself.”<sup>22</sup>

The FRONTLINE report continues:

**... [I]f a child goes from taking puberty blockers to taking hormones, they may no longer have viable eggs or sperm at the age when they decide they would like to have children ...**

While transgender adults have taken hormones sometimes for years, the generation growing up now is among the first to start taking hormones so young. Since most people who start hormones take them for life, doctors say there also isn’t enough research into the long-term impact of taking estrogen or testosterone for what could end up being 50 to 70 years.

“There are so many unanswered questions around the long-term consequences, and whether your health risk profile really becomes that of a male or female,” [Dr. Rob] Garofalo says. “If we start testosterone today, will you have the cardiac risk profile of a male or female as you grow older? Will you develop breast cancer because we’re administering estrogen? I think those are the unanswered questions that really trouble me, and can only be answered with long-term follow-up studies.” ...

Most of these treatments are still very expensive and often out of reach for people without the help of insurance. **The cost of puberty blockers is approximately \$1,200 per month for injections and can range from \$4,500 to \$18,000 for an implant.** The

<sup>22</sup> <https://www.telegraph.co.uk/news/2019/03/07/nhs-transgender-clinic-accused-covering-negative-impacts-puberty/>

least expensive form of estrogen, a pill, can cost anywhere between \$4 to \$30 a month, according to Simons, while **testosterone can be anywhere between \$20 to \$200 a vial.**

As one doctor who used to support the transgender ideology, but has now come to reject based on the evidence, has written: “It’s no surprise that most 16-year-olds who are commencing cross-sex hormones (not to mention 13-year-olds) do not care about whether or not they will be fertile at 30. Given that the prefrontal cortex (a section of the brain that weighs outcomes, forms judgments, and controls impulses and emotions) of teenagers is not developed enough to truly anticipate long-term consequences, why would any health professional allow teens to make such a life-changing decision? How does this kind of advice not constitute malpractice?”<sup>23</sup>

Dr. Tandy Aye, a Pediatric Endocrinologist at Stanford Children’s Health and the Medical Director of their Pediatric and Adolescent Gender Clinic, gave a TED Talk just this year in which she advocated for allowing adolescents to make decisions that will make them infertile permanently (see her discussion from the 5:45 to 6:45 time marks in this video).<sup>24</sup> She says, “Eighteen is the age in which minors are protected from making permanent decisions about their reproductive health because the thought is by eighteen they can decide what they would like to do. However, if as soon as pubertal blockers were added and then estrogen was added to [a boy’s] therapy, [his] testes never developed. In fact, [he] does not make any sperm. And [his] reproductive capability to be a biological parent has been eliminated. [His] testes are non-functional. And in medicine, don’t we often recommend the removal of non-functional organs, like an appendix? So therefore does it make sense for [the boy] to wait until [he’s] eighteen, or should older adolescents be allowed to have surgery before the age of eighteen?” Dr. Aye is directly saying that since kids can already get puberty blockers and estrogen, which destroys their ability to produce sperm, it makes no sense to deny adolescents the ability to have their penises and testicles removed, since those organs have already been rendered useless. That shocking prospect would become a reality under H.R. 5, which would mandate the sterilization of children who cannot possibly, under law or logic, give informed consent.

#### **How H.R. 5 Precludes the Reasonable and Rational Addressing of Adolescents’ Problems and Concerns**

H.R. 5 would add the words “sex (including ... gender identity)” to Title VI of the Civil Rights Act of 1964, which prohibits discrimination under any program or activity receiving federal funds, as follows:

No person in the United States shall, on the ground of race, color, ***sex (including sexual orientation and gender identity)***, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

<sup>23</sup> <https://www.feministcurrent.com/2019/04/10/i-supported-trans-ideology-until-i-couldnt-anymore/>

<sup>24</sup> <https://www.youtube.com/watch?v=L240CPOJ6FM&feature=youtu.be>

But sex does not include the amorphous concept of “gender identity,” a fact well-understood by the Congress and the states when they enacted and adopted the 19<sup>th</sup> Amendment to the United States Constitution.<sup>25</sup>

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<sup>25</sup> “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.” U.S. Const. Amend. 19.

The federal definition of “federal financial assistance” is extremely broad, and it clearly encompasses hospital, schools, and colleges and universities.<sup>26</sup> As described by the Department of Health and Human Services on its [website](#):<sup>27</sup>

<sup>26</sup> In 1988, Congress enacted the Civil Rights Restoration Act of 1987, to broadly define covered “programs and activities” under Title VI. Under that Act, the term “program or activity” means all of the operations of:

- (1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
  - (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government ...
  - (3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--
  - (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
  - (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation . . .
- any part of which is extended Federal financial assistance.

28 C.F.R. § 42.102(f) also defines “recipient of financial assistance” as follows:

- (c) The term Federal financial assistance includes:
  - (1) Grants and loans of Federal funds,
  - (2) The grant or donation of Federal property and interests in property,
  - (3) The detail of Federal personnel,
  - (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
  - (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.
- (d) The terms program or activity and program mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:
  - (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
  - (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
  - (2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or
  - (ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
  - (3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—
  - (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
  - (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
  - (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
  - (4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.
- (e) The term facility includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.
- (f) The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.

The HHS Office for Civil Rights (OCR) enforces civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and, in some cases, religion by certain health care and human services entities:

- state and local social and health services agencies,
- hospitals,
- clinics ...
- insurers who are participating in the Marketplaces and receiving premium tax credits, and
- other entities receiving federal financial assistance from HHS.

Under these laws, all persons in the United States have a right to receive health care and human services in a nondiscriminatory manner. For example, you cannot be denied services or benefits simply because of your race, color, national origin, or disability [to which would be added “gender identity” under H.R. 5].

H.R. 5 literally prohibits doctors from denying an adolescent -- often relying solely on information delivered through friends and social media -- medical services for a sex change operation when an adolescent states their “gender identity” is the opposite sex.

The definition of “gender identity” in H.R. 5 reads as follows:

(GENDER IDENTITY.—The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.

That definition doesn’t require any kind of diagnosis of a condition by any medical professional. It’s a purely self-referential definition: “The term ‘gender identity’ means the gender-related identity ... of an individual, regardless of the individual’s designated sex at birth.” It is circular and tautological, and enforces traditionally-imposed sex-based stereotypes. And as the research of Dr. Littman shows, there are dramatically rising rates of adolescents who wish to transition without having exhibited any early signs of gender dysphoria as medically defined by the DSM. H.R. 5 requires doctors to accept the self-diagnosis of kids for their own gender dysphoria, and for everyone covered by the bill to do so as well, to avoid being charged with discriminating in the provision of medical services or benefits against the “gender identity ... of an individual, regardless of the individual’s designated sex at birth.”

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<sup>27</sup> <https://www.hhs.gov/civil-rights/for-individuals/faqs/what-are-civil-rights/101/index.html>



1 U.S.C. § 8(a) explicitly states “In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words ‘person’, ‘human being’, ‘child’, and ‘individual’, shall include every infant member of the species homo sapiens who is born alive at any stage of development.”

As one parent’s testimonial states: “After recently talking to a Kaiser pediatrician in Tri-Valley, he admitted to me ‘off the record’ and as ‘his opinion’ but ‘NOT his medical advice’ in fear of losing his license (those were literally his words) that the pendulum in the medical community has swung too far, lost sight of common sense, and that parents should be far more careful when it comes to kids that are questioning their gender because their minds are not fully developed as an adult to make long-term decisions (e.g. taking hormones today but sterilizing oneself tomorrow). He advised that one should tell their kid, ‘I love you no matter what but let’s take this slow, investigate what’s going on with any underlying causes such as depression, anxiety, eating irregularities, sleeping irregularities, etc., and go from there.’” Yet H.R. 5 would prohibit “taking it slow” under federal law.

As Dr. Paul McHugh, himself the former chief psychiatrist at John Hopkins Hospital, who himself administered “gender identity” programs for decades, has written, based on extensive follow-up experience with patients:<sup>28</sup>

We at Johns Hopkins University—which in the 1960s was the first American medical center to venture into “sex-reassignment surgery”—launched a study in the 1970s comparing the outcomes of transgendered people who had the surgery with the outcomes of those who did not ... [T]heir subsequent psycho-social adjustments were no better than those who didn’t have the surgery. And so at Hopkins we stopped doing sex-reassignment surgery ...

It now appears that our long-ago decision was a wise one. A 2011 study at the Karolinska Institute in Sweden produced the most illuminating results yet regarding the transgendered, evidence that should give advocates pause. The long-term study—up to 30 years—followed 324 people who had sex-reassignment surgery. The study revealed that beginning about 10 years after having the surgery, the transgendered began to experience increasing mental difficulties. Most shockingly, their suicide mortality rose almost 20-fold above the comparable nontransgender population ... “Sex change” is biologically impossible. People who undergo sex-reassignment surgery do not change from men to women or vice versa ... Claiming that this is a civil-rights matter and encouraging surgical intervention is in reality to collaborate with and promote a mental disorder.<sup>29</sup>

<sup>28</sup> <https://www.wsj.com/articles/paul-mchugh-transgender-surgery-isnt-the-solution-1402615120>

<sup>29</sup> According to suicide.org, over 90 percent of people who die by suicide have a mental illness at the time of their death; the most common mental illness is depression; untreated depression is the number one cause for suicide; and untreated mental illness (including depression, bipolar disorder, schizophrenia, and others) is the cause for the vast majority of suicides. The one study on which most of the discussion on “transgender” suicide rates relies includes explicit descriptions of the serious limitations of the study. See <http://www.suicide.org/suicide-causes.html>. Here is what that study actually says: “[T]he survey did not directly explore mental health status and history, which have been identified as important risk factors for both attempted and completed suicide in the general population. Further, research has shown that the impact of adverse life events, such as being attacked or raped, is most severe

Under this bill, kids who need help with underlying issues will be placed into situations in which the law will close certain doors to them and push them through others. The “Findings and Purpose” section of H.R. 5 condemns “conversion therapy,” which it does not define. But what if a medical professional wants to suggest that person address other psychological problems that the medical professional comes to understand was the basis for their original decision to identify with the opposite sex? Would it be legal for individuals and government programs to help adolescents or adults through that process? Not under H.R. 5, as such counseling could be considered “conversion therapy” or otherwise constitute discrimination against a person’s declared identity as the opposite sex.

Under H.R. 5, people will be able to require that their identities on official records, including driver’s licenses and medical forms, be changed to match whatever sex they want to “identify” with, regardless of government or hospital needs to know the actual sex of an individual, including for purposes of proper medical treatment.<sup>30</sup> Already, a “transgender” complainant has insisted the Department of Veterans Affairs records be permanently altered, retroactively, to change their sex designation.<sup>31</sup>

A Democrat-invited witness at the hearing on H.R. 5, Sunu Chandy, Legal Director of the National Women’s Law Center, said “To say that people will go so far as to make up an entire identity, change their pronouns, maybe engage in medical treatment or not just simply to invade sex-segregated spaces or participate in sports is so outlandish, it’s so far-fetched. When you think about the weight and seriousness that someone goes through before deciding that they need to be presenting a gender-affirming gender identity.” Yet contrast that with the text of the bill and its definition of “gender identity,” which does not require “making up an entire identity, changing pronouns, or engaging in medical treatment.” Under H.R. 5, no one has to go through any process at all to demand their presence in a sex-segregated space. And note that Rep. Zoe Lofgren, in discussing an amendment offered to the Violence Against Women Act at a House Judiciary Committee markup earlier this year, said the following: “We’re the Judiciary Committee, and it falls to us to craft legislation that is certain and precise so that judges know

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among people with co-existing mood, anxiety and other mental disorders ... The lack of systematic mental health information in the NTDS data significantly limited our ability to identify the pathways to suicidal behavior among the respondents.” And so the survey itself makes clear there is no reliable information about the actual mental health status of the participants; and, since mental health problems are a known self-harm risk, there is no way to accurately determine whether the suicide attempt rate is as high as it is due to co-occurring mental illness -- not necessarily because of “gender dysphoria.” Further, another high risk factor for suicide is being physically or sexually assaulted, especially for people with mental health disorders. The same study also found that biological females (in contrast to biological males) who say other people generally don’t recognize them as trans have the same or *higher* suicide attempt rate as females who are more often recognized by others, stating “Trans men (FTM) were found to have the same prevalence of lifetime suicide attempts (46%) regardless of whether they thought others can tell they are transgender. ... for respondents in the last two gender identity categories – female-assigned cross-dressers and gender non-conforming/genderqueer people assigned female at birth – the prevalence of lifetime suicide attempts was found to be higher among those who said other people ‘occasionally’ or ‘never’ can tell they are transgender or gender non-conforming, compared to those who said that other people ‘always,’ ‘most of the time,’ or ‘sometimes’ can tell.” See <https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>. So, according to the study itself, there’s something more going on based on underlying psychological issues.

<sup>30</sup> <https://www.ncbi.nlm.nih.gov/pubmed?term=lindsey%20w%2C%20sex%2C%20drug>

<sup>31</sup> <https://amp.shreveporttimes.com/amp/3236472002>

what it means, and this [legislative language] is so loosely crafted it falls short of what we would need as a standard of excellence in terms of legislation.”

Also, as philosophy professor Rebecca Tuvel has indicated in an academic paper entitled “In Defense of Transracialism,”<sup>32</sup> published in the feminist journal *Hypatia*, if federal law buys into the false argument that sex as a legal category can be self-declared by individuals, why not make race into a legal category that can be self-declared by individuals? Based on the same false premise of H.R. 5, why shouldn’t those who identify with a racial group other than the one into which they were born also get recognition under federal law?

#### **H.R. 5 Will Eliminate Separate Spaces for Biological Females Under Federal Law**

H.R. 5, in the vast number of settings covered, will require that men be allowed to enter space formerly reserved for women. Whereas federal antidiscrimination laws are supposed to protect women from the unjust dominance of men in virtue of their generally bigger size and strength, H.R. 5 will require that dominance of males over females in sports, and incentivize that dominance in other areas, such as dormitories, locker rooms, bathrooms, and even the Girl Scouts, which is a federally chartered and federally funded organization.

Sexual predators will do whatever they can to exploit opportunities to victimize. Last year, nine women have sued the Poverello House, one of the largest service providers for homeless people in the Fresno, California, area, for allowing a male resident to sexually harass them during their stay at the nonprofit’s women’s shelter, leering at them in the shower, showing them pictures of himself masturbating, and making sexual advances. He was permitted to do these things on the basis that he “identifies as transgender.” The complaint is available [here](#).<sup>33</sup>

In England, Karen White, who is male, was transferred to a female prison on the basis of his self-declared “gender identity.” He later admitted to sexually assaulting women in a female prison and raping another two women outside jail.<sup>34</sup> As one writer has pointed out in the *Wall Street Journal*, “It doesn’t strain the human imagination to picture a male convict renaming himself ‘Sheila’ and heading for the women’s prison. Nor would it surprise anyone if rapists began to ‘identify’ as women—no physical alteration is required to change your gender identity—to gain free access to women’s showers. What pedophile wouldn’t want open access to girls’ bathrooms?”<sup>35</sup> Already in Ontario, Canada, a headline reads “Madilyn Harks, who may have victimized more than 60 young girls, changed her name from Matthew and transitioned to the female gender.”<sup>36</sup>

<sup>32</sup> <https://onlinelibrary.wiley.com/doi/full/10.1111/hypa.12327>

<sup>33</sup> <https://assets.documentcloud.org/documents/5000378/Poverello-Lawsuit.pdf>

<sup>34</sup> <https://www.theguardian.com/uk-news/2018/oct/11/transgender-prisoner-who-sexually-assaulted-inmates-jailed-for-life>

<sup>35</sup> <https://www.wsj.com/articles/the-transgender-war-on-women-11553640683>

<sup>36</sup> <https://thestarphoenix.com/news/canada/our-justice-system-is-broken-serial-child-sex-offender-dumped-into-ontario-city/wcm/79814f54-2b0c-49b2-9063-1de0cd8e7712>

Alexis Lightcap, a high school student in the United States, is also challenging the violation of privacy caused by her own school's policy of allowing boys in the girls' bathroom. A video describing her story can be found [here](#).<sup>37</sup>

H.R. 5 would take away, under federal law, the rights of women to have someone of the same sex:

- Supervise children on overnight trips
- Perform security pat downs or strip searches
- Supervise locker rooms and shared showers
- Handle intimate care for hospital and long-term patients
- Chaperone a doctor or medical assistant providing such care
- Perform intimate medical examinations

H.R. 5 would require that men be allowed into:

- Domestic violence or rape crisis centers
- Shared hospital rooms
- Locker rooms and group showers
- Multi-stall bathrooms
- Prisons or juvenile detention facilities
- Homeless shelters
- Overnight drug rehabilitation centers

As prominent author and gay advocate Andrew Sullivan writes, in opposing H.R. 5:<sup>38</sup>

The Equality Act also proposes to expand the concept of public accommodations to include “exhibitions, recreation, exercise, amusement, gatherings, or displays”; it bars any religious exceptions invoked under the Religious Freedom Restoration Act of 1993; and it bans single-sex facilities like changing, dressing, or locker rooms, if sex is not redefined to include “gender identity.” This could put all single-sex institutions, events, or groups in legal jeopardy ... The bill, in other words, “undermines the fundamental legal groundwork for recognizing and combating sex-based oppression and sex discrimination against women and girls.” ...

As Doreen Denny has written, under H.R. 5, “An employer who wants to cut health care and parental leave costs could choose a transgender person over a woman of child-bearing age and still get credit for the ‘woman hire.’ A college coach could choose to give a scholarship to a transgender athlete over a female athlete knowing the biology of the former gives the team a competitive advantage.”<sup>39</sup>

### **Girls and Women’s Sports Will Be Eliminated by the Forced Inclusion of Biological Boys and Men**

<sup>37</sup> <https://www.youtube.com/watch?v=ItYix6u2sVk>

<sup>38</sup> <http://nymag.com/intelligencer/2019/02/andrew-sullivan-the-nature-of-sex.html>

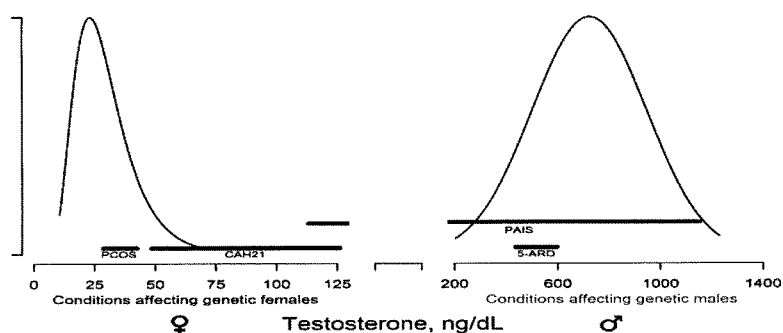
<sup>39</sup> <https://www.foxnews.com/opinion/doreen-denny-dont-be-fooled-ladies-the-equality-act-is-a-threat-to-all-of-us>

The threat is so profound that kids will say to their parents, “Mom and Dad, what did you do when they came for women’s sports?” Law professor Doriane Lambelet Coleman has authored a law review article entitled “Sex in Sport”,<sup>40</sup> which she summarizes as follows:<sup>41</sup>

There is a significant performance difference between males and females from puberty onward. Testosterone is the primary driver of that difference. There is a wide gap, no overlap, between the male and female T ranges ... Testicular production of testosterone is primarily responsible for the difference in male and female testosterone levels, both during development and throughout the individual's lifetime ... [T]here is no scientific doubt that testosterone is the reason that men as a group perform better than women in sports. Indeed, this is why men and women dope with androgens [a male sex hormone]

The following figure, also from *Sex in Sport*, demonstrates what we mean by “a lot more”:

Testosterone (T) Reference Ranges  
Sex Typical and Atypical (Intersex)



(Sport converts ng/dL to nanomoles per liter (nmol/l). In those units, the female range is from 0.4 to 2.1 nmol/l; the male range is from 10.2 to 39.9 nmol/l; and the gap between the two is 8.1 nmol/l.)

On average, even in the elite athlete population, males have 30 times more T than females. This includes both transgender women and girls starting from the onset of puberty ... This difference in T levels is responsible for the performance gap. Specifically, the sports science community is in wide agreement on the following three points, which they regard as our equivalent of judicially noticeable facts:

<sup>40</sup> <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4849&context=lcp>

<sup>41</sup> <http://reason.com/volokh/2019/03/12/on-the-biology-of-sex-sex-differentiati>

First, the main physical attributes that contribute to elite athletic performance are power generation (speed and strength), which is based on muscle mass, muscle fiber type, and biomechanics; aerobic power (VO2 max), which is based on hemoglobin concentration, total blood volume, maximal stroke volume, cardiac size/mass/compliance, skeletal muscle blood flow, capillary density, and mitochondrial content; body composition, i.e., lean body mass and fat mass; and economy of motion, which is related to body composition.

Second, males and females are materially different with respect to these attributes. Specifically, compared to females, males have greater lean body mass (more skeletal muscle and less fat), larger hearts (both in absolute terms and scaled to lean body mass), higher cardiac outputs, larger hemoglobin mass, larger VO2 max (also both in absolute terms and scaled to lean body mass), greater glycogen utilization, higher anaerobic capacity, and different economy of motion.

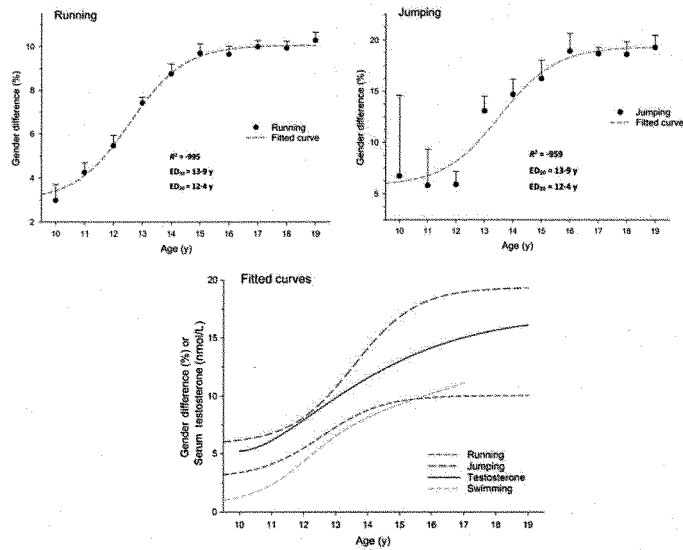
Third, the primary reason for these sex differences in the physical attributes that contribute to elite athletic performance is exposure in gonadal males with functional androgen receptors to much higher levels of testosterone during growth and development (puberty), and throughout the athletic career. No other endogenous physical or physiological factors have been identified as contributing substantially and predominantly to these differences.

This figure from andrologist David Handlesman shows the relationship between the onset of male puberty and the development of the performance gap:<sup>42</sup>

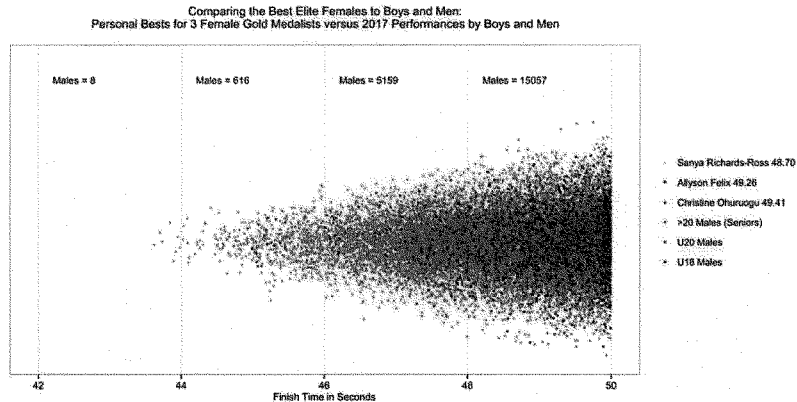
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<sup>42</sup> <https://academic.oup.com/edrv/article/39/5/803/5052770>

Sex differences in athletic performance emerge coinciding with the onset of male puberty



The figure [in the next chart] marks the individual *lifetime bests* of three well-known female Olympic Champions in the 400 meters—Sanya Richards-Ross, Allyson Felix, and Christine Ohuruogu—in the sea of male-bodied performances run *just in the single year 2017*. It shows that the women would lose to the very best senior men that year by about 12%. But it also shows that *even at their absolute best*, they would go on to lose to literally thousands of other boys and men ...



To give another example from Professor Coleman, “Most of the women’s world records [in athletics], even doped, lie outside the top 5000 times run by men. [Paula] Radcliffe’s marathon WR [2:15:25] ... is beaten by between 250 and 300 men per year.” In 2016, 470 men but no women ran faster, and the best time of the year by a woman—2:19:41—was surpassed by over 800 men.

From another summary by Professor Coleman:<sup>43</sup>

If you know sport, you know this beyond a reasonable doubt: there is an average 10-12% performance gap between elite males and elite females. The gap is smaller between elite females and non-elite males, but it’s still insurmountable and that’s ultimately what matters. Translating these statistics into real world results, we see, for example, that:

Just in the single year 2017, Olympic, World, and U.S. Champion Tori Bowie’s 100 meters lifetime best of 10.78 was beaten 15,000 times by men and boys. (Yes, that’s the right number of zeros.)

The same is true of Olympic, World, and U.S. Champion Allyson Felix’s 400 meters lifetime best of 49.26. Just in the single year 2017, men and boys around the world outperformed her more than 15,000 times.

... The lowest end of the male range is three times higher than the highest end of the female range ... There is no other physical, cultural, or socioeconomic trait as important as testes for sports purposes ...

The following chart summarizes the vast physical advantage biological boys and men have even over the highest-performing women worldwide:

<sup>43</sup> <https://law.duke.edu/sites/default/files/centers/sportslaw/comparingathleticperformances.pdf>



TABLE 4						
Event	Best Women's Result	Best Boys' Result	Best Men's Result	# of Boys Outperforming	# of Men Outperforming	Instances of Men Outperforming
100 Meters	10.71	10.15	9.69	124+	2,474	10,009
200 Meters	21.77	20.51	19.77	182	2,920	8,993
400 Meters	49.46	45.38	43.62	285	4,341	13,898
800 Meters	1:55.16*	1:46.3	1:43.10	201+	3,992+	12,285+
1500 Meters	3:56.14	3:37.43	3:28.80	101+	3,216+	8,251+
3000 Meters	8:23.14	7:38.90	7:28.73	30	1307+	1,784+
5000 Meters	14:18.37	12:55.58	12:55.23	15	1,243	2,140
High Jump	2.06 meters	2.25 meters	2.40 meters	28	777	2,741
Pole Vault	4.91 meters	5.31 meters	6.00 meters	10	684	2,981
Long Jump	7.13 meters	7.88 meters	8.65 meters	74	1,652	4,801
Triple Jump	14.96 meters	17.30 meters	18.11 meters	47	969	3,440

As Professor Coleman points out in her law review article “Sex in Sport,”<sup>44</sup> three of the eight competitors in the women’s 800 meters final at the Rio Olympics were “males [who identified as women] with very rare DSDs [disorders of sex development, in which T levels at the lower end or below the bottom of the male reference range, but much higher than females],” and it “was not a coincidence, nor was the fact that these athletes took all three spots on the podium.”

USA Powerlifting announced in January a prohibition on transgender women competing against biological females, citing the significant body of scientific evidence which suggests that simply lowering a trans competitor’s testosterone level to that of a typical biological female does not entirely eradicate the athletic advantages inherent to male biology. “Men naturally have a larger bone structure, higher bone density, stronger connective tissue and higher muscle density than women,” the competitive weightlifting association explained. “These traits, even with reduced levels of testosterone do not go away. While [male-to-female athletes] may be weaker and [have] less muscle than they once were, the biological benefits given them at birth still remain over that of a female.”<sup>45</sup> Rep. Ilhan Omar subsequently wrote a threatening letter to the organization.<sup>46</sup>

In 2014, the Washington Post published the following illustration showing the vast physical capacity differences between male and female bodies:<sup>47</sup>

<sup>44</sup> <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4849&context=lcp>

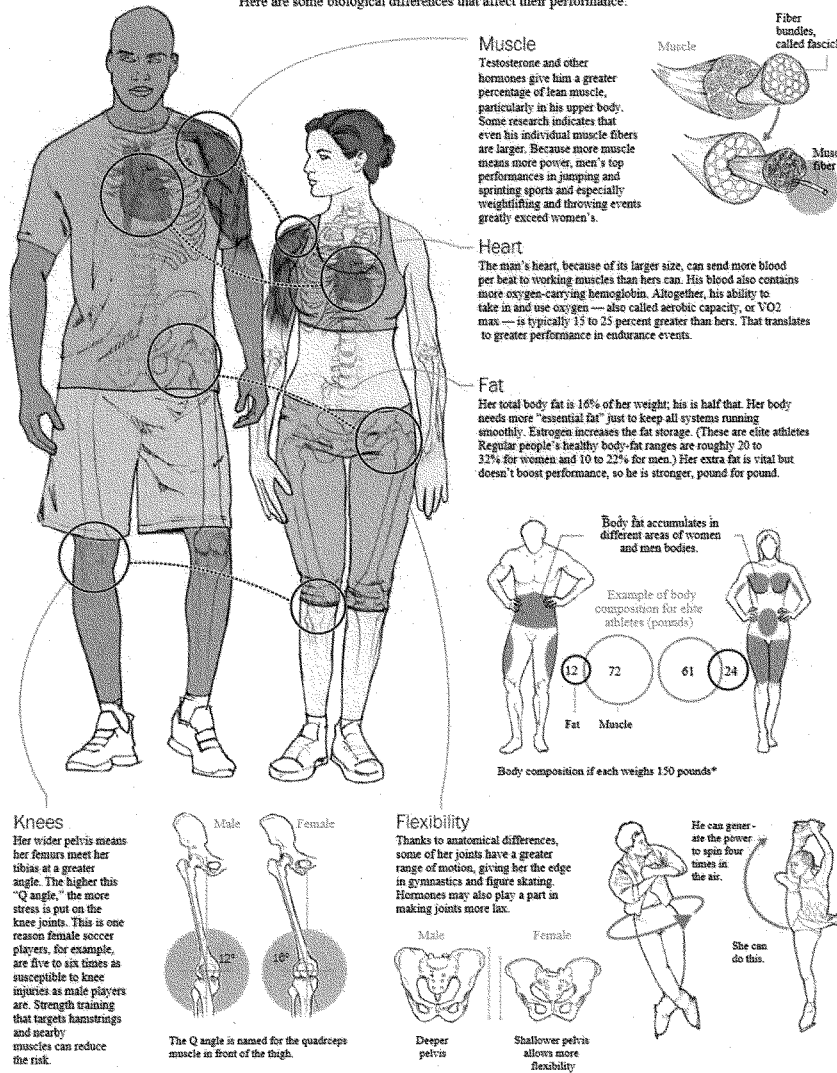
<sup>45</sup> <https://www.usapowerlifting.com/transgender-participation-policy/>

<sup>46</sup> <https://www.nationalreview.com/news/omar-demands-usa-powerlifting-lift-ban-on-trans-women/>

<sup>47</sup> <https://www.washingtonpost.com/apps/g/page/national/gender-performance-in-sports/830/>

# Fit but unequal

Take two highly trained, Olympic-caliber athletes: one man, one woman. Here are some biological differences that affect their performance:

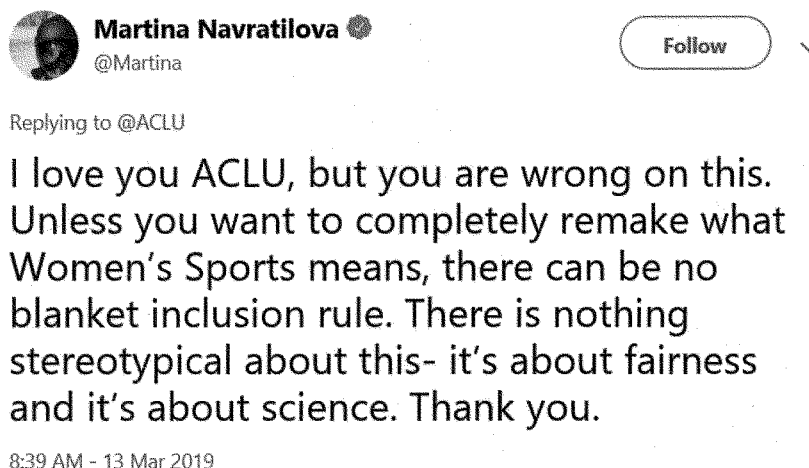


Sources: Barbara Bushman, exercise physiologist and editor of the American College of Sports Medicine's "Complete Guide to Fitness and Health"; Wayne Westcott, professor of exercise science at Quincy College and author of 25 books on strength training; "Gender differences in strength and muscle fiber characteristics," by A.E. Miller, et al., McMaster University, Ontario; American Academy of Orthopedic Surgeons; American Heart Association.

GRAPHIC: Bonnie Berkowitz And Alberto Cuadra - The Washington Post. Published Feb. 25, 2014.

As Professor Coleman concludes: “These data and comparisons explain why competitive sport has traditionally separated biological males (people with male bodies) from biological females (people with female bodies), and also why legal measures like Title IX in the United States require institutions to set aside and protect separate and equal funding, facilities, and opportunities for women and girls.” H.R. 5 would eliminate Title IX’s protections entirely by requiring gender identity to trump sex in all institutions receiving any federal money.

Women’s tennis great Martina Navratilova tweeted this in response to the ACLU’s tweet supporting H.R. 5:



Indeed, as they did in a similar competition last year, two male athletes just won the top two spots in the Connecticut girls Class S indoor track meet. Female athlete Selina Soule, who came in eighth, missed an opportunity to compete in front of college coaches by two places. “We all know the outcome of the race before it even starts; it’s demoralizing,” she said, “I fully support and am happy for these athletes for being true to themselves. They should have the right to express themselves in school, but athletics have always had extra rules to keep the competition fair.”<sup>48</sup> When girls come to “all know the outcome of the race before it starts,” what girls will want to participate in girls’ sports going forward?

On April 28, 2019, a biological man who identifies as a woman took the Masters world records for women’s squat, women’s bench press, and women’s deadlift.<sup>49</sup> A female Olympian

<sup>48</sup> <https://www.washingtontimes.com/news/2019/feb/24/terry-miller-andraya-yearwood-transgender-sprinter/>

<sup>49</sup> <https://pjmedia.com/trending/trans-woman-sets-world-records-olympian-decries-pointless-unfair-playing-field/>

responded by condemning the “pointless, unfair playing field” where biological women are beaten by biological men who identify as transgender women.<sup>50</sup>

As another commentator has pointed out:<sup>51</sup>

Lest we forget, in October of last year, a man won the women’s world cycling championship. The Connecticut girls high school state track championships have now been dominated for two years running by a pair of boys. Boys are winning girls high school wrestling championships, while in other cases, girls “transitioning” to boys are beating the rest of the girls after being pumped full of testosterone. For Pete’s sake, we even have men beating all the women in weightlifting.

As Professor Coleman has elaborated in “Sex in Sport”:<sup>52</sup>

In this particular institutional space, because introducing male bodies into the women’s category would mean that females were not competitive for the win, replacing “sex” with “gender” would “be a disaster for women’s sport ... a sad end to what feminists have wanted for so long” ...

[A]dopting sex blindness in competitive sport has the perverse effect of enabling non-elite boys and men to win spots and championships from elite girls and women ... They would take up spots on team and then in the semi-finals and finals of state and national age group events, and because these are the proving grounds for further opportunities, it is rational to assume that, without more, this would translate to diminished returns for girls and women ...

The simple but powerful point is that sex-based classifications by definition exclude all trans and some intersex people because their biology does not match their identity ...

It is true that the incidence of people with intersex conditions relevant to sport is extremely low ... [But] [i]f males with DSD and male-to-female trans athletes could compete as women without condition and controversy ... they would be identified by scouts and featured more systematically by teams; and because of the performance gap, their win share would increase disproportionately ...

[I]f sex classifications are abandoned here, either entirely or in favor of classifications based on gender identity, female athletes would almost always lose to males and both sport and society would lose many of the practical and expressive benefits that inure from including and celebrating females in competitive sport. This is as true of athletes at the

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[https://twitter.com/sharrond62/status/1122421385232551941?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1122421385232551941&ref\\_url=https%3A%2F%2Fpjmedia.com%2Ftrending%2Ftrans-woman-gets-world-records-olympian-decries-pointless-unfair-playing-field%2F](https://twitter.com/sharrond62/status/1122421385232551941?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1122421385232551941&ref_url=https%3A%2F%2Fpjmedia.com%2Ftrending%2Ftrans-woman-gets-world-records-olympian-decries-pointless-unfair-playing-field%2F)

<sup>51</sup> <https://hottair.com/archives/2019/04/11/house-democrats-try-force-schools-allow-boys-compete-girls-sports/>

<sup>52</sup> <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4849&context=lcp>

highest echelons like Serena Williams and Katie Ledecky as it is of the development athletes in high school, college, and beyond who aspire to take their place.

H.R. 5 would render Title IX wholly irrelevant. Title IX is the federal law that provides that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Since H.R. 5 amends Title IV to codify the “transgender” ideology in federal law in a way that affects all entities that receive federal financial assistance, Title IX would be superseded.

*Sports Illustrated* has highlighted<sup>53</sup> a “2013 study”<sup>54</sup> from the Women & Politics Institute [that] found that women who played sports were 25% more likely to express political aspirations than those who did not.” And as the *Huffington Post* points out,<sup>55</sup> “Girls who play sport stay in school longer, suffer fewer health problems, enter the labor force at higher rates, and are more likely to land better jobs. They are also more likely to lead. [The] research shows stunningly that 94 percent of women C-Suite executives today played sport, and over half played at a university level.” H.R. 5 would eliminate girls’ sports along with the role of girls’ sports in developing female leaders in government and business.

Here are just 10 examples of male athletes identifying as women in female sports.<sup>56</sup> Under the Equality Act, we could only expect much more of this.

1. In track, male runner Nattaphon Wanyat edged out high school female athletes at the Alaska state track championships.
2. In softball, male player Pat (Patrick) Cordova-Goff took one of 15 spots on his California high school women’s varsity softball team.
3. In basketball, a 50-year-old, 6-foot-8-inch, 230-pound man, Robert (Gabrielle) Ludwig, led the Mission College women’s basketball team to a national championship with the most rebounds.
4. In track and field, male high school runner CeCe Telfer won three titles in the Northeast-10 Championships for women’s track, and received the Most Outstanding Track Athlete award.
5. In mixed martial arts, male fighter Fallon Fox shattered female fighter Tamikka Brents’ eye socket and gave her a concussion. Brents said she “never felt so overpowered in her life.”
6. In football, male player Christina Ginther sued the Minnesota Independent Women’s Football League when they determined it was unsafe to let him play women. The league had changed its eligibility policy in 2012, requiring players to certify that they are and always have been female—but a jury awarded Ginther \$20,000 for being “discriminated” against under state law, and he was placed on multiple women’s teams.
7. In marathon running, male runner Aron Taylor won first place in his very first attempt in the Jacksonville Women’s Marathon.
8. In cycling, male cyclist Jillian (Jonathan) Bearden took first place in the women’s division of the U.S. Peleton at El Tour de Tucson in 2016. Bearden plans to qualify for the U.S. Women’s Olympic cycling team for 2020.

<sup>53</sup> <https://www.si.com/college-basketball/2016/11/03/female-athletes-cheri-bustos-are-changing-congress>

<sup>54</sup> [https://www.american.edu/spa/wpi/upload/Girls-Just-Wanna-Not-Run\\_Policy-Report.pdf](https://www.american.edu/spa/wpi/upload/Girls-Just-Wanna-Not-Run_Policy-Report.pdf)

<sup>55</sup> [https://www.huffpost.com/entry/sustaining-the-olympic-le\\_b\\_11683450](https://www.huffpost.com/entry/sustaining-the-olympic-le_b_11683450)

<sup>56</sup> <https://www.dailysignal.com/2019/04/24/how-pelosis-equality-act-would-ruin-womens-sports/>

9. In roller derby, a 6-foot-7-inch, 270-pound man, June Gloom, was featured on The Rollergirl Project—a blog showing different body types of roller derby skaters.
10. In Connecticut’s state track and field championships, two male high school runners, Andraya Yearwood and Terry Miller, took first and second place in multiple events, beating out top high school girls from across the state. Connecticut subsequently named Yearwood Athlete of the Year.

**H.R. 5 Would Reinforce Gender Stereotypes by Federal Law  
and Prohibit Reasonable Hiring Practices**

The definition of “gender identity” in the bill is so bizarre, it actually reinforces gender stereotypes. Again, the definition of “gender identity” in the bill reads as follows:

GENDER IDENTITY.—The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.

H.R. 5 refers explicitly to “gender-related ... appearance [and] mannerisms.” How would the supporters of the bill list out such “gender-related ... appearance[s] [and] mannerisms,” which courts will have to enshrine in law on a case-by-case basis? As prominent author and gay rights advocate Andrew Sullivan explains,<sup>57</sup> H.R. 5 “doesn’t only blur the distinction between men and women (thereby minimizing what they see as the oppression of patriarchy and misogyny), but that its definition of gender identity must rely on stereotypical ideas of what gender expression means. What, after all, is a ‘gender-related characteristic’? It implies that a tomboy who loves sports is not a girl interested in stereotypically boyish things, but possibly a boy trapped in a female body. And a boy with a penchant for Barbies and Kens is possibly a trans girl — because, according to stereotypes, he’s behaving as a girl would. So instead of enlarging our understanding of gender expression — and allowing maximal freedom and variety within both sexes — the concept of ‘gender identity’ actually narrows it, in more traditional and even regressive ways. What does ‘gender-related mannerisms’ mean, if not stereotypes?”

H.R. 5 does this despite the fact that its own Findings and Purpose section rightfully condemns “sex-based stereotypes.”

<sup>57</sup> <http://nymag.com/intelligencer/2019/02/andrew-sullivan-the-nature-of-sex.html>

How would proponents of H.R. 5 fill in the following chart? If H.R. 5 were ever enacted, courts around the country would have to decide, as a matter of law, what appearances, mannerisms, and characteristics apply to men or women.

Gender-related appearance	Gender-related mannerisms	Gender-related characteristics

Indeed, as law professor Gail Heriot, a Commissioner on the U.S. Civil Rights Commission, explains, the absolute protection of “gender-related mannerisms” under H.R. 5 will allow people to argue such “gender-related mannerisms” as “lack of aggression” can’t be used in employment decisions, even when an employer is looking for aggressive salespeople, or any other personality characteristic. As Professor Heriot explains.<sup>58</sup>

The problem is that huge numbers of mannerisms and characteristics are gender-related, and some of them are commonly job-related. In general, we regard aggressiveness to be more characteristic of males than females. That was the whole point of *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). The plaintiff in that case alleged that she was not promoted because she was thought to have an aggressive and hence “unladylike” personality, but that she would have been promoted if she had been a male with the same kind of personality. The Court agreed that if she would have been promoted if she had been male, she was discriminated against on the basis of sex within the meaning of Title VII.

By making gender-related characteristics (rather than sex itself) the subject of anti-discrimination laws, the proposed law would radically change the law. Right now it is a violation to fail to promote a woman with an aggressive personality if a man with the same personality would have been promoted. Under the proposed law, it would be a violation to fail to promote someone with a passive personality, if someone with an aggressive personality would have gotten the job.

But there are lots of jobs for which an aggressive personality is a legitimate job qualification, just as there are lots of jobs where a more passive, but nurturing, personality is the right fit. If the federal government prohibits employers from making hiring decisions on the basis of “gender-related characteristics,” it will be prohibiting a lot of rational behavior.

#### **For the First Time, H.R. 5 Explicitly Denies Exemptions to Religious Organizations**

For the first time ever, H.R. 5 would deny religious organizations their religious liberty rights under the Religious Freedom Restoration Act of 1993 (“RFRA”), which was enacted with

<sup>58</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3328723](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3328723)

overwhelming bipartisan support. RFRA's lead Democrat sponsor was Rep. Nadler, and it passed the House by unanimous consent and the Senate by a vote of 97 to 3. It was signed into law by President Clinton.

Here's what Reps. Schumer, Nadler, and Pelosi said about the Religious Freedom Restoration Act at the time:

- Rep. Schumer: "The Founders of our Nation, the American people today know that religious freedom is no luxury, but is a basic right of a free people. The bill will restore the first amendment to its proper place as one of the cornerstones of our democracy. It is simple. It states that the Government can infringe on religious practice only if there is a compelling interest and if the restriction is narrowly tailored to further that interest."<sup>59</sup>
- Rep. Nadler: "What has made the American experiment work--what has saved us from the poisonous hatreds that are consuming other nations--has been a tolerance and a respect for diversity enshrined in the freedom of religion clauses of our Bill of Rights. It was no accident that the Framers of our Bill of Rights chose to place the free exercise of religion first among our fundamental freedoms. This House should do no less."<sup>60</sup>
- Rep. Pelosi: "This legislation is important because it protects an individual's religious freedom from unnecessary Government interference. It provides for the reestablishment of fair standards to determine if Government intervention is necessary. Religious freedom is one the founding principles of this Nation. H.R. 2927 would ensure the continuation of this important principle. I hope that my colleagues will join me in supporting the protection of religious freedom by voting in favor of the Religious Freedom Restoration Act."<sup>61</sup>

The Religious Freedom Restoration Act provides, at 42 U.S.C. 2000bb-1:

- (a) IN GENERAL -- Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).
- (b) EXCEPTION -- Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—
  - (1) is in furtherance of a compelling governmental interest; and
  - (2) is the least restrictive means of furthering that compelling governmental interest.

But now, for the first time ever, H.R. 5 explicitly negates those provisions, stating "The Religious Freedom Restoration Act of 1993 ... shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title." Enacting H.R. 5 would constitute the first time since the

<sup>59</sup> <http://thomas.loc.gov/cgi-bin/query/F?r103:9:/temp/~r103NwMnPW:e38705>:

<sup>60</sup> <http://thomas.loc.gov/cgi-bin/query/F?r103:9:/temp/~r103NwMnPW:e33799>:

<sup>61</sup> <http://thomas.loc.gov/cgi-bin/query/F?r103:9:/temp/~r103NwMnPW:e63866>:



Religious Freedom Restoration Act was enacted on an overwhelmingly bipartisan basis a quarter-century ago that Congress negated its application anywhere.

Further, H.R. 5 actually expands the definition of “place of public accommodations” in Title VI to include places of “gathering,” along with “any establishment that provides a ... service, or program ... including [any] online ... service provider [or] food bank.” All these activities clearly include religious organizations, churches, synagogues, and mosques, requiring them to host celebrations of sex changes that violate sincerely held religious beliefs, and H.R. 5 itself contains no exemptions at all for religious entities.

Freedom of religion is protected by the Constitution, yet H.R. 5 removes crucial religious liberty protections. (And while religion is a personal belief system that’s protected under our civil rights laws, and our Constitution, it’s a belief system the protection of which doesn’t lead to an adolescent’s going to a doctor and demanding their bodies be subjected to irreversible hormone treatment or organ surgeries, including those that cause infertility, because they’re converting from, for example, Methodism to Presbyterianism. And freedom of religion doesn’t lead to the abolishment of girls and women’s sports, or to reasonable workplace rules.)

#### **Summary**

H.R. 5 will require doctors and others to treat adolescents’ declarations of “gender identity” as final, without parental involvement, harming adolescents’ mental and physical health, often permanently, with hormone treatments and surgical procedures. It would completely erase women and girls as a legally-protected category under civil rights law. It will eliminate girls’ and women’s sports. And it will deny religious liberty under the overwhelmingly bipartisan Religious Liberty Restoration Act for the first time ever.

#### **Additional Parent Testimonials (Supplied by the Kelsey Coalition)**

While many people mean well, there are those who seek to silence people whom want to get to the bottom of this with only the truth in mind, it is important to remember that one can be skeptical while still being supportive. My plea to you, a mother, look at the issues of what is happening to our children and young adults. Can you sleep at night knowing children & young adults are given puberty blockers, testosterone, mastectomies, hysterectomies? I know, I CAN’T.

I want to be clear, despite my daughter’s statements that my husband and I are ignorant and unaccepting, nothing could be further from the truth. We love Sarah to the end of the earth, and we are fighting for her every minute of every day. I am infuriated at those who would continue to lay this choice of transition or death, out to those of us who are so determined to get to the bottom of our children’s mental health struggles and help them to learn healthy coping strategies, perhaps in conjunction with well-studied medications, so that they may go on to live healthy, satisfying lives. I am infuriated at a medical and governmental community that bows to the political pressure of ideologues, leaving our children, mostly girls, under-treated and turning them into lifelong medical patients, using treatments with both known and many unknown risks. Moreover, I am frustrated at our society which turns a blind eye and ear to the de-transitioners who are telling us to stop the madness.

Finally, I find it surreal that as parents, we are treated as bigots and child abusers because we don't blindly follow our teen's current feelings. There is a reason that teenagers have parents. We are the guardrails against the raging hormones and extreme feelings that occur during this time of life. Beyond that, when our children are ill, we are begging the medical community to discern and treat the underlying medical issues and return our children to mental health. Cross sex hormones and surgeries to create the appearances of the opposite gender are not magic bullets for mental health concerns, nor for the normal but excruciating pains of growing up. Let our children grow up. Let the brain develop its full capacity for rational decision making before we let a minor's feelings dictate his or her permanent medicalization.

Finally, I want to provide a personal example that may resonate with current adults as they think back to being a teenager themselves. Being a teenager is difficult. Many elements of their lives and futures feel out their control, and that is very scary. Some teens, predominantly females, seek to regain control by severely limiting their food intake. These girls could appease the social norm of thinness and simultaneously their internal need to control their lives by living by an anorexic code: I am a good girl if I eat 5 carrots for lunch and feel hungry. I am a bad girl if I eat a bagel or feel full. I was one of those girls, and every day I checked the mental box of being a good girl. I could control the declining numbers on the scale when I could not control anything else. What I had going for me, is that not once did a member of the medical community indulge my fantasy that I needed to lose weight. Why on earth are we indulging these children that their lives will fall into place if only they become permanent medical patients with the appearances of the opposite gender ... [I]t pains me and infuriates me to no end that our legislatures are codifying statutes, and many of our medical professionals are abdicating their hippocratic oath, in an attempt to appease a trans ideology that says, if you feel you are male you are male, biology notwithstanding.

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Please remember, we are talking about hormones that make irreversible changes in the body, and mutilating body parts through surgery without even requiring that they have a long period of counseling to delve into deeper reasons why this problem is becoming an epidemic in our schools.

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[Our daughter's] boyfriend's Dad got transferred to another state and he had to move away. This heartbreak set into motion a cascading set of events that ultimately landed her in a full time, outpatient mental health program ...

When she returned back to high school a girl approached her to introduce herself. Turns out she was in an outpatient program too the same time my daughter was (different program, same building). This girl had recently came out at school as transgender and had given herself a boy name. WITHIN 24 HOURS my daughter declared she too was a boy trapped in a girls body and was picking out a new name. When she announced this at school, the school practically threw her a parade. Behind our backs, the faculty and staff referred to her by her new name ...

In talking with the [School] District VP she had told us that their 'hands were tied' and that it was a law that they had to follow. She referred us to the 2016 Obama Executive order (that was a guideline) that was stayed in the fall of 2016. There was no law in the books but that is what she was telling parents. During this tumultuous time we learned the following:

The guidance counselor, who was very active in the trans community, was advising our daughter about halfway houses she could go to *because her parents did not support her*. I confronted him about this in front of high level district management and he admitted it and nobody in charge said a word or was concerned.

We took our daughter to see a highly respected therapist the school district uses. During his final report readout to us, when we asked if he thought our daughter was authentically transgender he answered quickly and authoritatively that it was very clear to him that our daughter's sudden connection with being transgender was being driven by her underlying mental health conditions. IMPORTANT TO NOTE that the therapist would only share his thoughts OFF THE RECORD. He stated he would be fearful to 'report' his thoughts on this topic due to the backlash he anticipated receiving.

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Shortly after starting college, our once confident daughter began to appear highly anxious and distraught. She informed us that she identified as transgender and planned to start testosterone and get a mastectomy. While this was a shock, in hindsight it was not entirely a surprise. Two of our friends' teen daughters had recently come out as transgender (for one of the friends, both daughters were affected). A number of my daughter's friends, many of whom she has known since childhood, had recently changed their pronouns, and her close female friend had recently begun taking testosterone.

Looking for help, we talked to our daughter's psychiatrist, who treated her for OCD/ADHD for years. He opined that she was likely experiencing an obsessive episode, exacerbated by the stress of living away from home, and the impulsivity characteristic of ADHD, rather than being "transgender." Yet, there was nothing he could do to intervene with the university clinic due to privacy laws ...

We then turned to an experienced gender therapist, who admitted she was puzzled by the wave of "suddenly trans" teen/young adult females as it used to be a highly atypical presentation, but said she would approve them for hormones, since the diagnosis of gender dysphoria is effectively based on a self-report of wanting to be the opposite sex. Due to the laws prohibiting any exploration of alternative causes of bodily distress as "conversion therapy", we were unable to find a therapist who can work with our daughter to explore how her OCD, ADHD, same-sex attraction, and peer pressure may be contributing to her sudden desire for a medical transition.

... [W]e are terrified that at any point our daughter can access powerful and harmful drugs and surgeries to amputate healthy body parts, which will be gleefully provided to her, free of charge (courtesy of Medicaid and university insurance), without any proper medical vetting, without any evidence from long-term studies applicable to her demographic, and long before she is considered mature enough to drink or rent a car.

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[Our daughter] left for an elite college (one of the national top universities). She seemed fine the first semester. She was home for winter break. It was at the end of her second semester that she avoided contact with us and then we found that she was presenting herself very differently, she was using a new and strange name, and much to our horror, we discovered that she had obtained cross-sex hormones in the student health clinic.

It is difficult to express our shock. She was never gender-atypical. She never wanted to be a boy. This new identity seemed more about losing herself, rather than finding herself. It was as though she wanted to kill off her former self. The identity was also mixed up with political activism, gender studies, sexuality, seeing everything as black and white. We could not believe that it was possible to get testosterone in the student health clinic. We could not believe that someone with some significant mental health problems could access this treatment.

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After recently talking to a Kaiser pediatrician in Tri-Valley, he admitted to me “off the record” and as “his opinion” but “NOT his medical advice” in fear of losing his license (those were literally his words) that the pendulum in the medical community has swung too far, lost sight of common sense, and that parents should be far more careful when it comes to kids that are questioning their gender because their minds are not fully developed as an adult to make long-term decisions (e.g. taking hormones today but sterilizing oneself tomorrow). He advised that one should tell their kid, “I love you no matter what but let's take this slow, investigate what's going on with any underlying causes such as depression, anxiety, eating irregularities, sleeping irregularities, etc., and go from there. Is that okay with you?”

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**Selected Examples Of Harms From “Gender Identity” Policies  
Women’s Liberation Front – April 28, 2019**

The following are selected examples of material harms to women and girls that have *already* been caused or exacerbated by existing “gender identity” laws and policies. These examples are taken from various U.S. states and several countries outside the U.S. Under H.R. 5 (the “Equality Act”), **none of the following examples would have required fraudulent intent – in fact the concept of fraudulent intent is irrelevant under H.R.5.** This is because H.R. 5 explicitly defines “gender identity” as being determined by any person’s self-declared claims about their subjective and changeable “gender identity.” And it further mandates that “gender identity” must displace considerations of sex in all areas of civil rights law, including determining eligibility for jobs where being male or being female is a bona fide occupational qualification—such as jobs that involve the provision of intimate care for disabled or elderly women, the supervision of minors when they are partially or fully nude, the supervision and intimate care of incarcerated women, and the conduct of bodily searches.

### **WOMEN’S SHELTERS**

**State/country:** Alaska  
**Harm by:** NOW Canada Society  
**Victim:** Women in Shelter  
**Source:** Klaudia Van Emmerik, *Concerns over transgender client at Okanagan shelter*, Global News, Mar. 9, 2017

Two homeless women were asked to leave a women’s shelter in Kelowna, British Columbia, after they complained that the shelter required one of them to share a room with a man who claims to identity as a woman. One of the women, who was fleeing an abusive relationship with a man, observed that the man in the shelter retains his male genitals yet has been deemed more worth of eligibility for the women’s shelter. NOW Canada, the society that operates the shelter refused to comment on the specific case, saying only: “It is against the law to discriminate against transgender individuals. [We] and other shelters in Kelowna welcome people without regard to... gender identity.”

**State/country:** California  
**Harm by:** State of California, Obama admin. HUD  
**Victim:** Homeless women  
**Source:** Corin Hoggard, *Shelter forced women to shower with person who identified as a transgender...*, ABC30 Action News, May 23rd, 2018

Nine homeless women sued the Poverello House in Fresno, CA, because they were forced to share their women’s shelter with a man who claims to be a woman. The women’s lawsuit say that the man “began making lewd comments to the women, specifically saying things about their

breasts and other body features as the group was nude. Some of the women also caught [the man] looking at them through cracks in the shower stalls and while they used the restroom.” The women say that the man “showed some of the women nude pictures and videos, including media that showed the [man] masturbating.” The women told the Poverello House staff about the harassment, but rather than being protected from sexual harassment they were told they needed to be more accepting of the transgender community.

**State/country:** Alaska  
**Harm by:** Anchorage Human Rights Commission  
**Victim:** Homeless women  
**Source:** Trudy Ring, *Alaska Homeless Shelter’s Suit Challenges Trans Protections*, *The Advocate*, Sept. 25, 2018

The Downtown Hope Center offers a shelter for homeless women in Anchorage, Alaska. A man who claims to be a woman filed a complaint with the Anchorage Equal Rights Commission when the shelter would not let him stay in its sleeping rooms with women. The shelter has been forced by this man’s action to spend the shelter’s own funds to file a lawsuit challenging the city’s nondiscrimination ordinance. According to their lawsuit, “Anchorage is interpreting its laws to force the Hope Center to admit men into its women’s shelter and to stay silent about the differences between men and women.”

**State/country:** Canada  
**Harm by:** Christopher Hambrook  
**Victim:** Women in shelter  
**Source:** Sam Pazzano, *A sex predator’s sick deception*, *Toronto Sun*, February 15, 2014

Christopher Hambrook is a man who claimed to be a woman, who preyed on women at two Toronto shelters. He has been convicted of sexually assaulting a girl as young as 5 years old. His victims include a deaf and homeless Quebec woman and a Toronto survivor of domestic violence.

**State/country:** Canada  
**Harm by:** Kimberly Nixon  
**Victim:** Women in shelter, women running Vancouver Rape Relief  
**Source:** Vancouver Rape Relief website, *Chronology of Events in Kimberly Nixon vs Vancouver Rape Relief Society*, June 1, 2009

Vancouver Rape Relief was forced to withstand a decade-long lawsuit filed by Kimberly Nixon, a man who identified as trans, because Nixon complained that Vancouver Rape Relief should not be allowed to employ only female rape counselors. After spending thousands of dollars Vancouver Rape Relief was eventually exonerated by the Supreme Court of Canada, which found that surviving girlhood and young womanhood is key to the rape counseling service Vancouver Rape Relief provides.

**State/country:** Canada  
**Harm by:** Morgane Oger, formerly Ronan Louis Oger  
**Victim:** Vancouver Rape Relief  
**Source:** Meghan Murphy, Feminist Current, Discontinuation of grant to Vancouver Rape Relief shows trans activism is an attack on women, March 20, 2019

Despite the Canadian Supreme Court ruling that Vancouver Rape Relief has the right to maintain women-only services, a man who calls himself Morgane Oger convinced the Vancouver City Council to discontinue a \$30,000 grant for public education. Meghan Murphy, Feminist Current, Discontinuation of grant to Vancouver Rape Relief shows trans activism is an attack on women, March 20, 2019.

### WOMEN'S SPORTS

**State/country:** Connecticut  
**Harm by:** Connecticut public schools, Andraya Yearwood, Terry Miller  
**Victim:** Selina Soule, other high school girls in Connecticut  
**Source:** Family Research Council, *The Hurdles of Genderless Track*, March 1, 2019

Selina Soule, other female track athletes Selina Soule was pushed out of qualifying for the New England regional track meets spots by two tran-identified males. She lost the chance to be seen by college recruiters and likely therefore lost potential scholarships.

**State/country:** Alaska  
**Harm by:** Alaska School Activities Association, Nattaphon "Ice" Wangyot  
**Victim:** Saskia Harrison, other high school girls in Alaska  
**Source:** Karen Garcia, *Transgender student in Southeast Alaska sets her own path*, Anchorage Daily News, June 1, 2016, Ben Rohrbach, *Transgender track athlete makes history as controversy swirls around her*, USA Today, June 2, 2016

Nattaphon "Ice" Wangyot is a young man who is interested in stereotypical girls' fashion. When he sought to play on the girls' sports teams at high school, the Alaska School Activities Association left the decision up to individual schools. The school decided to allow Wangyot to join the girls' volleyball and track teams based on his self-declaration of "gender identity" and their perception of his "actions, attitude, dress and mannerisms" as being stereotypically associated with girls. As a senior competing in track, he displaced junior Saskia Harrison from the field of 16 competitors eligible to compete in the 100-meter state competition.

**State/country:** California  
**Harm by:** Gov. Jerry Brown, CA Interscholastic Federation, Patrick Cordova-Goff  
**Victim:** High school girls in California  
**Source:** Ruben Vives, LA Times, *Transgender teen to play on Azusa High's girls' softball team*, Feb. 14, 2014

Patrick Cordova-Goff is a boy who took a girl's spot on the Azusa, California High School's girls' softball team in 2014. He was allowed to do so under rules developed by the California Interscholastic Federation, citing California AB 1266, a law that prohibits public schools from

“discriminating on the basis of specified characteristics, including gender, gender identity and expression,”

**State/country:** USA, California  
**Harm by:** NCAA, Gabrielle Ludwig  
**Victim:** College women  
**Source:** Marianne L. Hamilton, *The Mercury News*, *McDonald captures more than images with her camera ... she tells real-life stories*, Nov. 4, 2013

Under an NCAA policy, a 50-year-old, 6-foot-8-inch, 220-pound man who calls himself Gabrielle Ludwig was allowed to take a woman's place on the Mission College women's basketball team in California, and through to the national championship.

**State/country:** Minnesota  
**Harm by:** Christina Ginther, Minnesota legislature and courts  
**Victim:** Women football players in Minnesota  
**Source:** Laura Yuen, MPR News, *Snubbed by one team, transgender football player feels at home at last*, Mar. 10, 2017; Mary Lynn Smith, *Star Tribune*, *Jury's award to transgender woman after rejection by football team is a Minnesota first*, Dec. 21, 2018

A man who calls himself Christina Ginther sued the Minnesota Independent Women's Football League after the league determined it was unsafe to let him play in the women's league. “As a man, Ginther ran marathons, competed in tae kwon do and lifted weights.” After Ginther sued under the Minnesota Human Rights Act, he was awarded \$20,000.

**State/country:** USA  
**Harm by:** Rachel McKinnon, formerly Rhys McKinnon; UCI Masters officials  
**Victim:** Dr. Jen Wagner-Assali, other female cyclists  
**Source:** Alex Ballinger, *Cycling Weekly*, *Rachel McKinnon becomes first transgender woman to win track world title*, October 17, 2018

Rachel McKinnon is a man who took gold in the women's age 35-44 sprint at the UCI Masters Track Cycling World Championships in 2018. In April 2019 he was briefly suspended by Twitter for saying he wants all women who reject “gender identity” to die in a grease fire, but was quickly restored after LGBTQ advocacy groups pulled strings with Twitter.

**State/country:** USA/International Olympics  
**Harm by:** USA Cycling, International Olympic Committee  
**Victim:** Elite women cyclists  
**Source:** Staff, *Cycling Today*, *Transgender cyclist dominates women's cycling race*, undated; Erik Brady, *USA Today*, *These transgender cyclists have Olympian disagreement on how to define fairness*, Jan. 11, 2018

A man who calls himself Jillian Bearden took first place in the women's division of the U.S. Peleton competition at El Tour de Tucson in 2016. Bearden, who believes his male genitals were



"misplaced hardware" may take a woman's sport on the U.S. Women's Olympic cycling team for 2020.

**State/country:** Virginia, USA  
**Harm by:** Mary Gregory, 100% Raw Powerlifting Federation  
**Victim:** Woman powerlifters  
**Source:** Mary Gregory Instagram post dated April 27, 2019; 100% Raw Powerlifting Federation 2019 schedule/results (awaiting results)

A man who calls himself Mary Gregory was allowed to compete in the 2019 Masters Nationals Powerlifting Championships in Virginia. The meet was sponsored by the 100% Raw Powerlifting Federation, which boasts that all competitions are subject to drug testing. Gregory took to social media on the day of the meet to announce that he'd won the "masters world squat record, open world bench record, masters world [deadlift] record, and masters world total record."

**State/country:** New Zealand  
**Harm by:** Laurel Hubbard, Australian sports authorities  
**Victim:** Iuniarra Sipaa, other women weightlifters  
**Source:** Renee Gerlich, *New Zealand is green-lighting gender identity ideology and policy without considering the consequences*, Feminist Current, Oct. 30, 2018

A man who calls himself Laurel Hubbard represented New Zealand in the women's weightlifting events during the 2018 Commonwealth Games. In the Australian International women's weightlifting championships in 2017 Hubbard displaced the silver medalist, a Samoan woman, by 42 pounds.

**State/country:** Australia  
**Harm by:** Hanna Mouncey, Australian women's football  
**Victim:** Australian women footballers  
**Source:** Natasha Chart, Trans-identified male Hannah Mouncey cleared to play football at the state league level in Australia, Feminist Current, Feb. 13, 2018

Callum Mouncey, a trans-identified male who calls himself Hannah. He has been approved by the Australia women's football league to play at the state level, a sport that is similar to rugby, despite having already broken a woman's leg during play.

#### INCARCERATED WOMEN

**State/country:** New York  
**Harm by:** NYC, Mayor Bill de Blasio  
**Victim:** Incarcerated women in NYC  
**Source:** NYC Office of the Mayor, *Mayor de Blasio Announces Department of Correction Will House Incarcerated Individuals According to Gender Identity...* Press Release, April 16, 2018.

In April 2018 New York City Mayor de Blasio announced that the City's Dept. of Corrections will house men who claim to identify as women in women's facilities. The press release said that the City will conduct individualized assessments to "provide for the health and safety of inmates and DOC staff" - but not for the safety of the women forced to be housed with these men.

**State/country:** Texas  
**Harm by:** US Bureau of Prisons, Peter Langan, "Linda" Thompson  
**Victim:** Incarcerated women  
**Source:** Lauren McGaughy, *Trump administration enters into settlement talks over treatment of transgender inmates*, Dallas News, March 26, 2018

The US Bureau of Prisons allowed several men who claim to be women to be moved to Carswell, a female-only prison in Fort Worth, TX. The men include Peter Langan, a convicted bank robber and co-founder of the Aryan Republican Army prison gang, and a 60-year old man who robbed a bank specifically in order to be placed in women's prison. Three women housed in Carswell filed a lawsuit in 2017 after the men sexually harassed and exposed themselves to women there.

**State/country:** Illinois  
**Harm by:** Illinois Department of Corrections, Deon "Strawberry" Hampton, MacArthur Justice Center at the Northwestern Pritzker School of Law  
**Victim:** Incarcerated women at Logan Correctional Center, Illinois  
**Source:** AP, Deon 'Strawberry' Hampton, a pre-op transgender inmate in Illinois, gets rare transfer to women's prison, *Canoe.com*, December 27, 2018

A man who calls himself Strawberry Hampton was moved from a male prison to a women's correctional center by the Illinois Department of Corrections. Hampton, who retains his male genitalia, successfully argued that he must be allowed to be housed with women in order to reduce his own exposure to sexual violence in men's correctional facilities.

**State/country:** UK  
**Harm by:** UK Ministry of Justice, "Karen White" aka Stephen Wood  
**Victim:** Incarcerated women  
**Source:** Nazia Parveen, *Karen White, 52, admitted sexually assaulting women in female prison and raping two other women outside jail*, *Guardian* Oct. 11, 2018

Karen White had already admitted raping two women but was nonetheless placed in women's jail under the UK's transgender prison policy. The prison service removed him after he admitted sexually harassing and assaulting women in the female prison. The decision to house Stephen Wood/Karen White with women was made under the Ministry of Justice's policy that all cases of trans-identified prisoners' requests for housing be considered on a case-specific basis. Under the Equality Act's "gender identity" provisions there is no exception or qualification for male prisoners who claim to identify as women.

**State/country:** UK

**Harm by:** UK Ministry of Justice, Martin Ponting  
**Victim:** Incarcerated women  
**Source:** Fair Play for Women, *Half of all transgender prisoners are sex offenders or dangerous category A inmates*, Nov. 9, 2017; *How many transgender prisoners are there and where are they located?* Analysis of 2018 HMPPS Equality statistics, Dec. 9, 2018

In the UK according to 2018 prison data, there were 22 male prisoners housed in a female prison, including double child rapist Martin Ponting who now calls himself Jessica and is held at Bronzefield women's prison. 2017 data showed that half of male prisoners who claim to be women are convicted sex offenders, compared to 20% in the general male population and 3% in the female population.

**State/country:** UK  
**Harm by:** UK Ministry of Justice, Peter Laing  
**Victim:** Incarcerated women  
**Source:** Marcello Mega, *Transgender murderer Paris Green to have reassignment surgery on NHS*, The Times, November 19 2018

Paris Green was found guilty of sexually torturing and murdering a man. He was allowed to serve 18-year minimum sentence in the prison's women's wing, but had to be removed after engaging in sexual activity with women incarcerated there. In November 2018 it was announced he would have genital cosmetic surgery while serving his term, paid by the National Health Service.

#### PUBLIC FACILITIES

**State/country:** Idaho, USA  
**Harm by:** Target Stores, Shauna Smith, other men  
**Victim:** Women and girls who shop Target  
**Source:** Niraj Chokshi, *Transgender Woman Is Charged With Voyeurism at Target in Idaho*, NY Times, July 14, 2016; Paul Dirks, *Gender-Inclusion Policies and Sexual Violence: A Longitudinal Analysis of Media Reports at Target Stores*, Jan. 29, 2018

After Target announced that it would make its bathrooms mixed-sex based on gender identity, a man who calls himself Shauna Smith was arrested for taking photos of a woman in a Target fitting room. Relatedly, a study has concluded that voyeurism-related offenses ("upskirting" and peeping) have increased significantly - between 2 and 3 times - after the publication of Target's gender-inclusion policy in April, 2016

**State/country:** Pennsylvania  
**Harm by:** Boyertown Area School Dist., Obama administration  
**Victim:** Alexis Lightcap and other minor students of both sexes  
**Source:** Women's Liberation Front, *WoLF Presses US Supreme Court to Preserve Civil Rights of Women and Girls*, WoLF website, Dec. 19, 2018

Alexis Lightcap was shocked to find a boy in the girls' bathroom at her high school. School officials told her that he had a right to be there because he identifies as transgender. Her case is before the Supreme Court right now.

**State/country:** UK  
**Harm by:** Jess Bradley  
**Victim:** Women in public  
**Source:** Jake Hurfurt, *Britain's first official transgender student officer suspended...*, Mail on Sunday, July 28, 2018

Jess Bradley is a man who identifies as trans. He was Britain's first official transgender students' officer in the National Union of Students, until he was suspended over allegations that he posted photos of himself flashing in a public park, at a bus stop, and at his office desk.

### CUSTODY

**State/country:** Ohio  
**Harm by:** Ohio court  
**Victim:** 17 year-old girl and her parents  
**Source:** Jen Christensen, *Judge gives grandparents custody of Ohio transgender teen*, CNN, February 16, 2018

Parents of a 17 year old girl lost custody of their daughter, who was placed with the girl's grandparents, because the parents refused to allow the girl to inject testosterone. The Hamilton County, Ohio, judge found that the girl has the right to receive high doses of testosterone based on her "gender identity."

### MEDICAL

**State/country:** USA  
**Harm by:** NIH, Johanna Olson  
**Victim:** Children  
**Source:** Chan, Yee-Ming et al., Abstract, *The Impact of Early Medical Treatment in Transgender Youth*, Aug. 1, 2015; Johanna Olson, May 10, 2017 Annual grant report.

In 2017 the National Institutes for Health gave Johanna Olson, a prominent child transition proponent, a nearly-\$1 million grant to study "psychosocial outcomes" of giving children diagnosed with "gender dysphoria" untested puberty blockers and high dose wrong sex hormones. In May 2017 Olson filed an annual report stating that the study would expand eligibility of participants to children as 8-13 who are receiving opposite-sex hormones.

**WOMEN'S FREE SPEECH**

**State/country:** Canada  
**Harm by:** Jonathan/Jessica Yaniv  
**Victim:** 16 women aestheticians  
**Source:** Julie Bindel, Meghan Murphy, *Twitter and the new trans misogyny*, The Spectator, Nov. 26, 2018

Jonathan Yaniv is a man who calls himself Jessica and has been found online talking about 10-year old girls and tampons. He filed complaints against 16 beauticians who declined to wax his testicles because they wish only to provide services to women, putting their livelihoods at risk.

**State/country:** UK  
**Harm by:** UK Police  
**Victim:** Posie Parker, Caroline Farrow, Kate Scottow  
**Source:** *Second woman is investigated by police over transphobic comment*, The Telegraph, March 20, 2019

West Yorkshire police have questioned and warned Kellie-Jay Keen-Minshull, a women's rights activist, and Caroline Farrow, a journalist, for stating facts on Twitter about sex and gender identity policies. Charges are pending against Ms. Keen-Minshull.

**State/country:** Canada  
**Harm by:** Lisa Kreut, formerly Ryan Kreut  
**Victim:** Meghan Murphy, Feminist Current  
**Source:** Julie Bindel, Meghan Murphy, *Twitter and the new trans misogyny*, The Spectator, Nov. 26, 2018

Lisa Kreut is a man who sometimes also calls himself Hailey Heartless, and offers sexual sadism videos and services online. He has targeted lesbians on social media, and targeted advertisers to pull their business from the journalism site Feminist Current.

**State/country:** UK  
**Harm by:** Athlete Ally  
**Victim:** Martina Navratilova, lesbian and bisexual women and girl athletes  
**Source:** Guardian Sport, *LGBT group drops Martina Navratilova over transgender comments*, Guardian, Feb. 20, 2019

Martina Navratilova has been removed as an ambassador by Athlete Ally after pointing out that men who claim to be transwomen have an unfair advantage when they play in women's sports.

**Amendments Offered at Committee**

The following amendments were offered at committee by the following Members. All were defeated on party-line votes. In rejecting these amendments, it's clear supporters of the bill intend the bill to do exactly what the adoption of these amendments would have prevented:

**Rep. Tom McClintock:**

Add at the end the following:

SEC. 13. RULE OF CONSTRUCTION. (a) IN GENERAL.—Nothing in this Act or any amendment made by this Act may be construed to require a health care provider to affirm the self-professed gender identity of a minor. (b) DEFINITIONS.—In this section: (1) The term “minor” means an individual who has not attained the age of 18 years and who is not emancipated under the law of the State in which the minor resides. (2) The term “health care provider” means—(A) any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation; and (B) any other person or entity treated as a health care provider, health care professional, or health care institution for purposes of State law.

**Rep. Greg Steube:**

Add at the end the following:

SEC. 13. RULE OF CONSTRUCTION. Nothing in this Act or any amendment made by this Act may be construed to require a biological female to face competition from a biological male in any sporting event.

**Rep. Mike Johnson:**

Add at the end the following:

SEC. 13. RULE OF CONSTRUCTION. Nothing in this Act or any amendment made by this Act may be construed to deny a parent’s right to be involved in their minor child’s medical care. For purposes of this section—(1) the term “minor” means an individual who has not attained the age of 18 years and who is not emancipated under the law of the State in which the minor resides; and (2) the term “parent” means a parent or guardian, a person with legal custody of a minor, or a person standing in loco parentis who has care and control of the minor and with whom the minor regularly resides as determined by State law.

**Rep. Louis Gohmert** (amendment to restore application of the Religious Freedom Restoration Act):

Page 21, strike line 1 and all that follows through line 6.

Signed,

DOUG COLLINS,  
*Ranking Member.*  
 LOUIE GOHMERT.  
 MATT GAETZ.  
 MIKE JOHNSON.  
 TOM MCCLINTOCK.  
 DEBBIE LESKO.  
 KELLY ARMSTRONG.  
 W. GREGORY STEUBE.  
 GUY RESCHENTHALER.  
 ANDY BIGGS.