

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE DEPARTMENT OF EDUCATION RELATING TO “NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE”

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JUNE 25, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Ms. FOXX, from the Committee on Education and the Workforce, submitted the following

## R E P O R T

together with

## MINORITY VIEWS

[To accompany H.J. Res. 165]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the joint resolution (H.J. Res 165) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

### PURPOSE

The purpose of H.J. Res. 165 is to provide Congressional disapproval and reverse the Title IX rule finalized by the Department of Education. H.J. Res. 165 formally dispenses with the Biden administration’s final Title IX rule so that educational institutions can continue protecting the safety of women and girls and their access to educational opportunities.

## COMMITTEE ACTION

## 117TH CONGRESS

*First Session—Hearing*

On June 23, 2021, the Committee on Education and the Workforce held a hearing on “Examining the Policies and Priorities of the U.S. Department of Education.” The purpose of the hearing was to review the Fiscal Year 2022 budget priorities of the U.S. Department of Education, including on the topic of the Biden administration’s interpretation of regulations on Title IX. Testifying before the Committee was The Honorable Miguel Cardona, Secretary, U.S. Department of Education, Washington, DC.

*Second Session—Hearing*

On May 26, 2022, the Committee on Education and the Workforce held a hearing on “Examining the Policies and Priorities of the U.S. Department of Education.” The purpose of the hearing was to review the Fiscal Year 2023 budget priorities of the U.S. Department of Education. Testifying before the Committee was The Honorable Miguel Cardona, Secretary, U.S. Department of Education, Washington, DC. At this hearing, concerns regarding Title IX were raised, such as the rewriting of Title IX regulations by the Biden administration to undermine protections for girls and women.

## 118TH CONGRESS

*First Session—Hearings*

On February 8, 2023, the Committee on Education and the Workforce held a hearing on “American Education in Crisis.” The purpose of the hearing was to examine the state of American education, including K–12 education, postsecondary education, and workforce development. Testifying before the Committee were Ms. Virginia Gentles, Director, Education Freedom Center, Independent Women’s Forum, Arlington, VA; Dr. Monty Sullivan, President, Louisiana Community and Technical College System, Baton Rouge, LA; Mr. Scott Pulsipher, President, Western Governors University, Salt Lake City, UT; and Mr. Jared Polis, Governor, State of Colorado, Denver, CO. During this hearing, Ms. Gentles highlighted several troubling developments related to Title IX, including the need to protect women’s sports and combat radical gender ideology.

*Legislative Action*

On February 1, 2023, Representative Greg Steube (R–FL) introduced H.R. 734, Protection of Women and Girls in Sports Act of 2023 with Committee on Education and the Workforce Chairwoman Virginia Foxx (R–NC) and Representatives Mariannette Miller-Meeks (R–IA), Claudia Tenney (R–NY), Robert Wittman (R–VA), Daniel Webster (R–FL), Troy Balderson (R–OH), Ken Buck (R–CO), Ann Wagner (R–MO), Buddy Carter (R–GA), Matt Gaetz (R–FL), Jason Smith (R–MO), Jake Ellzey (R–TX), Morgan Griffith (R–VA), Doug LaMalfa (R–CA), Jerry Carl (R–AL) as original cosponsors. The bill was referred solely to the Committee on Education and the Workforce. On March 8, 2023, the Committee con-

sidered H.R. 734 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 25–17. The Committee adopted the following amendment to H.R. 734:

1. Representative Burgess Owens offered an Amendment in the Nature of a Substitute (ANS) that made one technical change.

On June 5, 2024, Representative Mary Miller (R–IL) introduced H.J. Res. 165, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance” with Chairwoman Foxx and Representatives Elise Stefanik (R–NY), Diana Harshbarger (R–TN), Anna Paulina Luna (R–FL), Tenney (R–NY), Debbie Lesko (R–AZ), Lisa McClain (R–MI), Julia Letlow (R–LA), Ashely Hinson (R–IA), Lauren Boebert (R–CO), Harriet Hageman (R–WY), Marjorie Taylor Green (R–GA), Monica De La Cruz (R–TX), Stephanie Bice (R–OK), Jim Banks (R–IN), Rick Allen (R–GA), Ben Cline (R–VA), Bill Posey (R–FL), John Rutherford (R–FL), Pete Sessions (R–TX), Brian Babin (R–TX), Guy Reschenthaler (R–PA), Tim Burchett (R–TN), Ralph Norman (R–SC), Scott Franklin (R–FL), Andrew Clyde (R–GA), William Timmons (R–SC), Jeff Duncan (R–SC), Randy Weber (R–TX), Steube, Bob Good (R–VA), Keith Self (R–TX), Andrew Ogles (R–TN), Clay Higgins (R–LA), Andy Biggs (R–AZ), Jefferson Van Drew (R–NJ), Kevin Hern (R–OK), Alexander Mooney (R–WV), Josh Brecheen (R–OK), Chuck Fleischmann (R–TN), Gus Bilirakis (R–FL), Austin Scott (R–GA), Barry Moore (R–AL), Michael Guest (R–MS), Dan Bishop (R–NC), Nathaniel Moran (R–TX), Tim Walberg (R–MI), Paul Gosar (R–AZ), Richard McCormick (R–GA), Tom Tiffany (R–WI), Doug Lamborn (R–CO), Daniel Webster (R–FL), Glenn Grothman (R–WI), Burgess Owens (R–UT), Michael Cloud (R–TX), Elijah Crane (R–AZ), Robert Aderholt (R–AL), Aaron Bean (R–FL), Eric Burlison (R–MO), Dan Crenshaw (R–TX), Nick LaLota (R–NY), Pete Stauber (R–MN), Mike Ezell (R–MS), Mike Bost (R–IL), Richard Hudson (R–NC), Chip Roy (R–TX), Scott Perry (R–PA), and Brad Finstad (R–MN) as original co-sponsors. The bill was referred solely to the Committee on Education and the Workforce. On June 13, 2024, the Committee considered H.J. Res. 165 in legislative session and reported it favorably to the House of Representatives by a recorded vote of 24–16. The Committee did not consider any amendments to H.J. Res. 165.

#### COMMITTEE VIEWS

##### INTRODUCTION

In April, the Biden administration announced its final Title IX rule,<sup>1</sup> which erases the fundamental protections Title IX promises to women and girls. If this rule stands, no longer will Title IX be a tool for protecting the access of women and girls to equal educational opportunities. It is imperative that Congress passes this resolution to restore the promise of Title IX.

<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf>.

### *Title IX Has Worked*

In 1972, Congress enacted Title IX to increase educational opportunities for women and girls. Since then, Title IX has paved the way for tremendous strides in access to education, scholarships, athletics, and more for millions of students across the country. Since Title IX's enactment, female participation in high school sports has grown more than 1,000 percent and in collegiate sports more than 600 percent.<sup>2</sup> Unfortunately, the Biden administration rule will undermine this progress.

### *Biden Administration Rule Is Unlawful*

The Title IX rule is unlawful in multiple ways. First, the Biden administration justifies its interpretation of Title IX by pointing to the Supreme Court's ruling in *Bostock v. Clayton County* (*Bostock*). However, the Biden administration ignores the Supreme Court's own explicit warning against interpreting its *Bostock* opinion as applying to Title IX or other civil rights laws prohibiting sex discrimination. In that case, the Court stated, "But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind."<sup>3</sup>

Second, this rule strips students, educators, and parents of their legal rights. Disagreeing with the radical left's view of gender is now unlawful under this rule, which is a blatant violation of students' and educators' Free Speech rights. In addition, this rule's overturning of longstanding Supreme Court precedent establishing what constitutes sexual harassment will further chill speech in classrooms.

This rule also strips due process protections from students previously enshrined in Title IX regulations. Institutions are now able to return to single investigator models in which one staff member serves as investigator, judge, and jury. The rule eliminates the right of students on college campuses to a live hearing in which competing claims can be fairly evaluated. Access to evidence for the accused has also been curtailed.

Worst of all, this rule enshrines in law the left's ongoing war against parental rights. Under this rule, educators are encouraged not to tell parents about physical, mental, and emotional struggles their children are experiencing. The Biden administration is actively encouraging schools to hide the emotional distress of kindergarteners from their parents.

Third, this rule violates the Supreme Court's major questions doctrine. In *West Virginia v. EPA*,<sup>4</sup> the Supreme Court prohibited agencies from resolving questions of [quote] "vast economic and political significance" [unquote] without clear statutory authorization. Congress has given no clear statutory authorization to the Department of Education to justify this radical reinterpretation of Title IX, and this rule is clearly of vast economic and political significance.

<sup>2</sup> <https://www.billiejeanking.com/equality/title-ix/#:~:text=The%20law%20opened%20doors%20and,percent%20at%20the%20college%20level>.

<sup>3</sup> *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

<sup>4</sup> *West Virginia v. EPA*, 142 S. Ct. 2587 (2022).

### *Biden Administration Rule Is Radical*

At a time when medical associations around the world are waking up to the tremendous harm being done by the radical left's efforts to cancel biology,<sup>5</sup> this rule doubles down. It also runs counter to the values and desires of the American public, the vast majority of whom are horrified at the thought of boys showering and changing in locker rooms with girls. They are equally outraged at the prospect of young men taking away athletic awards and opportunities from young women. But this rule makes clear that Democrats believe they actively support these changes and that they will strip communities of education funding if those communities refuse to go along with this radical new agenda.

Democrats argue that this rule does not affect women's sports, but this is not true. Section 106.31(a)(2) of the regulation states:

In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by 20 U.S.C. 1681(a)(1) through (9) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b)(1), or § 106.41(b). Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

Athletic competition is not included in the listed exceptions to this general rule. In addition, the Biden administration intervened in a court case in West Virginia in opposition to a state law ensuring that only biological women would participate in women's sports.<sup>6</sup> While the Department of Education is sitting on a separate regulation dealing specifically with athletics,<sup>7</sup> it is clear the Biden administration intends to force educational institutions to give biological men women's athletic opportunities at the expense of women and girls. For all these reasons, it is clear that this final rule is a deliberate attempt by the Biden administration to rip athletic opportunities away from women and girls.

### CONCLUSION

Congress must pass this resolution of disapproval under the *Congressional Review Act* to send a clear message to the Biden administration that Congress stands with women and girls.

### SUMMARY

H.J. Res. 165 is a resolution of disapproval under the *Congressional Review Act* that would overturn the Department of Education's rule relating to "Nondiscrimination on the Basis of Sex in

<sup>5</sup> <https://cass.independent-review.uk/home/publications/final-report/>.

<sup>6</sup> <https://www.washingtontimes.com/news/2021/jun/17/biden-doj-sides-transgender-athletes-against-west-/>.

<sup>7</sup> <https://www.federalregister.gov/documents/2023/04/13/2023-07601/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

Education Programs or Activities Receiving Federal Financial Assistance.”

#### H.J. RES. 165 SECTION-BY-SECTION SUMMARY

H.J. Res. 165 is a resolution of disapproval under the *Congressional Review Act* that would overturn the Department of Education’s rule relating to “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.”

#### EXPLANATION OF AMENDMENTS

No amendments to the resolution were adopted.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.J. Res. 165 provides for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.”

#### UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93–344 (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4), the Committee traditionally adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the Congressional Budget and Impoundment Control Act of 1974.

#### EARMARK STATEMENT

H.J. Res. 165 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

#### ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 6/13/24

**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 6

Bill: H.J. Res. 165

Amendment Number: n/a

Disposition: Motion to Report H.J. Res. 165, passed by a Full Committee Roll Call Vote

(24 y – 16 n)

Sponsor/Amendment: Rep. Miller

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mrs. FOXX (NC) (Chairwoman)	X			Mr. SCOTT (VA) (Ranking)		X	
Mr. WILSON (SC)	X			Mr. GRUJALVA (AZ)			X
Mr. THOMPSON (PA)	X			Mr. COURNTEY (CT)		X	
Mr. WALBERG (MI)	X			Mr. SABLAN (MP)		X	
Mr. GROTHMAN (WI)	X			Ms. WILSON (FL)		X	
Ms. STEFANIK (NY)	X			Ms. BONAMICI (OR)		X	
Mr. ALLEN (GA)	X			Mr. TAKANO (CA)		X	
Mr. BANKS (IN)	X			Ms. ADAMS (NC)		X	
Mr. COMER (KY)	X			Mr. DESAULNIER (CA)		X	
Mr. SMUCKER (PA)	X			Mr. NORCROSS (NJ)			X
Mr. OWENS (UT)	X			Ms. JAYAPAL (WA)			X
Mr. GOOD (VA)	X			Ms. WILD (PA)		X	
Mrs. MCCLAIN (MI)	X			Ms. MCBATH (GA)		X	
Mrs. MILLER (IL)	X			Mrs. HAYES (CT)		X	
Mrs. STEEL (CA)	X			Ms. OMAR (MN)		X	
Mr. ESTES (KS)	X			Ms. STEVENS (MI)		X	
Ms. LETLOW (LA)	X			Ms. LEGER FERNÁNDEZ (NM)		X	
Mr. KILEY (CA)	X			Ms. MANNING (NC)		X	
Mr. BEAN (FL)	X			Mr. MRVAN (IN)		X	
Mr. BURLISON (MO)	X			Mr. BOWMAN (NY)			X
Mr. MORAN (TX)	X						
Ms. CHAVEZ-DEREMER (OR)	X						
Mr. WILLIAMS (NY)	X						
Ms. HOUCHIN (IN)	X						

TOTALS: Ayes: 24

Nos: 16

Not Voting: 4

Total: 44 / Quorum: / Report:

(24 R - 20 D)

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House rule XIII, the goal of H.J. Res. 165 is to provide for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.”

## DUPLICATION OF FEDERAL PROGRAMS

No provision of H.J. Res. 165 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.

## STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee’s oversight findings and recommendations are reflected in the body of this report.

## REQUIRED COMMITTEE HEARING

In compliance with clause 3(c)(6) of rule XIII the following hearing held during the 118th Congress was used to develop or consider H.J. Res. 165: On May 7, 2024, the Committee on Education and the Workforce held a hearing on, “Examining the Education Department’s Policies, Priorities, and FY 2023 Financial Audit Failure.”

## NEW BUDGET AUTHORITY AND CBO 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 received the following estimate for H.R. 7683 from the Director of the Congressional Budget Office:



### At a Glance

#### Subject of the Legislation

As ordered reported by the House Committee on Education and the Workforce on June 13, 2024

On June 13, 2024, the House Committee on Education and the Workforce ordered reported eight bills and one joint resolution. This comprehensive document provides estimates for seven of those bills and the resolution.

- H.R. 618 would have an insignificant effect on direct spending; thus, pay-as-you-go procedures apply. The other six bills and the resolution would not affect direct spending or revenues; thus, pay-as-you-go procedures do not apply to those pieces of legislation.
- H.R. 8606 would increase spending subject to appropriation by \$8 million over the 2024-2029 period. The other pieces of legislation would increase spending subject to appropriation by less than \$500,000.
- H.R. 8534 would impose an intergovernmental mandate by prohibiting states from designating varsity athletes of a school, conference, or association as employees of that entity. None of the other pieces of legislation would impose intergovernmental mandates. None of the bills or the resolution would impose private-sector mandates.

Details of the estimated costs of each piece of legislation are discussed in the text.

Bill	Net Increase or Decrease (-) in the Deficit Over the 2024-2034 Period (Millions of Dollars)	Changes in Spending Subject to Appropriation Over the 2024-2029 Period (Outlays, Millions of Dollars)	Mandate Effects?
H.J Res. 165	0	*	No
H.R. 618	*	*	No
H.R. 5567	0	*	No
H.R. 6816	0	*	No
H.R. 8534	0	*	Yes
H.R. 8606	0	8	No
H.R. 8648	0	*	No
H.R. 8649	0	*	No

\* = between -\$500,000 and \$500,000.

**Legislation summary:** On June 13, 2024, the House Committee on Education and the Workforce ordered to be reported eight bills and one joint resolution. This document provides estimates for seven of those bills and the resolution.

Generally, the legislation would:

- Repeal a rule submitted by the Department of Education relating to “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;”
- Allow nurse practitioners and physician assistants to diagnose, treat, and certify an injury and extent of disability for the purposes of federal workers’ compensation;
- Require elementary and secondary schools and institutions of higher education to meet new requirements in order to maintain eligibility for funding from the Department of Education;
- Prevent student athletes from being considered the employees of an institution of higher education; and
- Authorize appropriations for the educational activities of the United States Holocaust Memorial Museum.

**Estimated Federal cost:** The estimated costs of the legislation fall within budget function 500 (education, training, employment, and social services).

**Basis of estimate:** For this estimate, CBO assumes that the legislation will be enacted near the end of fiscal year 2024. The esti-

mated costs do not include any interaction effects among the pieces of legislation. If all seven bills and the resolution were combined and enacted as a single piece of legislation, the estimated costs could be different than the sum of the separate estimates, although CBO expects that any difference would be small.

CBO estimates that implementing H.R. 8606 would cost \$8 million over the 2024–2029 period. Implementing the remaining bills and the joint resolution would each cost less than \$500,000 over the same period. Any related spending would be subject to the availability of appropriated funds.

H.J. Res. 165, a joint resolution providing for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to “Non-discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.” H.J. Res 165 would disapprove the rule submitted by the Department of Education relating to “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” as published in the Federal Register on April 29, 2024.

The rule amends title IX of the Education Amendments of 1972 (title IX), which prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance. The rule clarifies definitions related to sex-based discrimination and harassment and specifies the requirements for grievance procedures, and requirements for preventing sexual discrimination and remedying its effects.

Institutions that fail to comply with title IX, as amended by the rule, could lose federal funding. However, CBO expects that institutions will comply with the regulations to avoid doing so. On that basis, CBO estimates that disapproving the rule would not affect institutions’ eligibility for federal student aid.

Based on the costs of similar activities, CBO estimates that implementing the resolution would cost less than \$500,000 over the 2024–2029 period. Any related spending would be subject to the availability of appropriated funds.

H.R. 618, Improving Access to Workers’ Compensation for Injured Federal Workers Act: H.R. 618 would allow nurse practitioners and physician assistants to diagnose, prescribe treatment, and certify an injury and the extent of disability for the purpose of compensating federal workers under the Federal Employees’ Compensation Act (FECA). Using information from the Department of Labor, CBO expects that nonphysician providers would be compensated at the same rate as physicians and that total benefits provided to injured federal workers would not significantly change. Some people may receive treatment more quickly under the bill, which could increase costs over the 10-year period because some payments to medical providers that would have occurred in 2035 under current law could be paid in 2034. On the other hand, if injured workers receive treatment faster, some may return to work more quickly, which could reduce costs. CBO has no basis to estimate which effect would predominate, but we expect that those effects would roughly offset each other. Thus, CBO estimates that enacting H.R. 618 would affect net direct spending by an insignificant amount.

The FECA payments are mandatory. The costs of those payments are charged to a claimant's employing agency, which reimburses the Department of Labor out of its salaries and expense accounts. Any effect on discretionary spending would be subject to future appropriation actions.

H.R. 5567, CLASS Act: H.R. 5567 would require public elementary and secondary schools that receive funding from the Department of Education to disclose to the department funds received or contracts signed with foreign sources that are more than \$10,000.

CBO expects schools would comply with the new requirements; thus, enacting the bill would not affect their eligibility to receive federal funds. Based on the costs of similar activities, CBO estimates that implementing the bill would cost the Department of Education less than \$500,000 over the 2024–2029 period. Any related spending would be subject to the availability of appropriated funds.

H.R. 6816, PROTECT Our Kids Act: H.R. 6816 would prohibit elementary and secondary schools that receive direct or indirect support from the government of the People's Republic of China (including Confucius Institutes), from receiving funds from the Department of Education.

The 2018 National Defense Authorization Act prohibited institutions of higher education from using federal funding for Chinese language programs at Confucius Institutes. As a result, nearly all Confucius Institutes at postsecondary institutions have closed, according to a Government Accountability Office report released in 2023.<sup>1</sup> On that basis, CBO expects schools would comply with the new requirements; thus, enacting the bill would not affect their eligibility to receive federal funds.

Based on the costs of similar activities, CBO estimates that implementing the bill would cost the Department of Education less than \$500,000 over the 2024–2029 period. Any related spending would be subject to the availability of appropriated funds.

H.R. 8534, Protecting Student Athletes' Economic Freedom Act: The bill would prohibit student athletes from being considered an employee of an institution based on the athletes' participation in a varsity intercollegiate athletic program or competition. Based on the costs of similar activities, CBO estimates that implementing the bill would cost the Department of Education less than \$500,000 over the 2024–2029 period. Any related spending would be subject to the availability of appropriated funds.

H.R. 8606, Never Again Education Reauthorization and Study Act of 2024: H.R. 8606 would authorize the appropriation of \$2 million each year from 2026 through 2030 for the Director of the United States Holocaust Memorial Museum to support education and training related to the lessons of the Holocaust. Under current law, the authorization of appropriations for those activities expires at the end of 2025. The bill also would require the Director to conduct a study on the educational activities being carried out at the state and local level. Assuming appropriation of the authorized amounts and using historical spending patterns for those activities,

<sup>1</sup> Government Accountability Office, China: With Nearly All U.S. Confucius Institutes Closed, Some Schools Sought Alternative Language Support, GAO–20–105981 (October 2023), [www.gao.gov/products/gao-24-105981](https://www.gao.gov/products/gao-24-105981).

CBO estimates that implementing H.R. 8606 would cost \$8 million over the 2024–2029 period and \$2 million after 2029.

H.R. 8648, Civil Rights Protection Act of 2024: H.R. 8648 would require any institution of higher education that receives federal student aid to make publicly available its process for addressing violations of title VI of the Civil Rights Act and any complaints received regarding alleged violations. The bill also would require the Assistant Secretary for Civil Rights at the Department of Education to give monthly briefings on violations specific to race, color, or national origin, and report the findings of institutional complaints.

CBO expects institutions would comply with the new requirements; thus, enacting the bill would not affect their eligibility for federal student aid. Based on the costs of similar activities, CBO estimates that implementing the bill would cost the Department of Education less than \$500,000 over the 2024–2029 period. Any related spending would be subject to the availability of appropriated funds.

H.R. 8649, Transparency in Reporting Adversarial Contributions to Education Act: The bill would require elementary and secondary schools that receive funding from the Department of Education to disclose to parents and the public any contributions received from foreign countries and the terms or conditions of such contributions.

CBO expects schools would comply with the new requirements; thus, enacting the bill would not affect their eligibility to receive federal funds. Based on the costs of similar activities, CBO estimates that implementing the bill would cost the Department of Education less than \$500,000 over the 2024–2029 period. Any related spending would be subject to the availability of appropriated funds.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that enacting H.R. 618 would affect net direct spending by less than \$500,000 over the 2024–2034 period.

Increase in long-term net direct spending and deficits: CBO estimates that enacting the joint resolution or any of the seven bills in this estimate would not increase net direct spending or deficits in any of the four consecutive 10-year periods beginning in 2035.

Mandates: H.R. 8534 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting states from designating varsity athletes of a school, conference, or association as employees of that entity. CBO estimates that the net costs of the direct effects of the legislation would not result in additional expenditures or losses in revenue; therefore, the cost of the preemption would not exceed the threshold established in UMRA for intergovernmental mandates (\$100 million in 2024, adjusted annually for inflation).

The bill would not impose a private-sector mandate as defined in UMRA.

Enacting the legislation may result in other secondary effects on private entities by denying employment-related benefits to varsity athletes that they may otherwise have qualified for as an employee. However, CBO's estimate of those effects is subject to uncertainty because the question of whether athletes affected by the

bill should be recategorized as employees of their institutions remains unsettled as court rulings, administrative decisions, and changes in policies of the National Collegiate Athletics Association are announced. What effect, if any, the bill would have on private entities would depend on the final adjudication of the matter.

None of the remaining pieces of legislation contained in this estimate would impose intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Meredith Decker (Department of Labor); Leah Koestner (Department of Education); Susanne Mehlman (United States Holocaust Memorial Museum); Garrett Quenneville (Department of Education). Mandates: Erich Dvorak, Brandon Lever, and Grace Watson.

Estimate reviewed by: Elizabeth Cove Delisle, Chief, Income Security Cost Estimates Unit; Justin Humphrey, Chief, Finance, Housing, and Education Cost Estimates Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.J. Res. 165. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the Committee adopts as its own the cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

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

As reported by the Committee, H.J. Res. 165 makes no changes to existing law.

## MINORITY VIEWS

### INTRODUCTION

H.J. Res. 165, *Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”*, would nullify the Biden Administration’s recently introduced final regulations on title IX of the *Education Amendments of 1972* (Title IX).<sup>8</sup> It would force the Department of Education (ED) to revert to enforcing a previous rule that received widespread condemnation for permitting educational institutions to turn a blind eye to sex discrimination and assault. Further, ED would be prevented from promulgating a similar comprehensive rule addressing sex discrimination in education programs or activities receiving federal assistance.

The Majority claims the passionate intensity in support of this resolution is driven by the need to protect women and girls. Such a claim is contrary to statements from actual advocates for women and girls, who overwhelmingly support this rule. Pathetically, from their own words (or lack thereof), H.J. Res. 165 appears driven primarily by the desire to deny the existence of transgender youth. This is yet another chapter in the House Republican campaign of culture war legislation. Their target is a vulnerable class of students who, like their peers, simply want to learn in settings free from discrimination and harassment.

### SUMMARY OF CONCERNS

#### *The Importance of the Title IX Rule*

Instead of repealing the existing rule in its entirety, the rule recently finalized by the Biden Administration (“2024 Rule”) built off certain provisions of the rule finalized by the Trump administration (“2020 Rule”), but made key distinctions and revisions that will be lost if H.J. Res. 165 were to become law. For example, the 2024 Rule clarifies that institutions of higher education (IHEs) have to address off-campus sex discrimination that’s part of their educational activity.<sup>9</sup> It clarified that even if an underlying incident occurred off campus, if it contributed to a hostile environment in the IHE’s educational activity it must be addressed.<sup>10</sup> The 2020 Rule limited the number of employees required to report on incidents of sexual discrimination, and demanded *actual* knowledge be-

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<sup>8</sup>20 U.S.C. §1681 et seq; Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

<sup>9</sup>See 34 C.F.R. pt. 106.11(2024).

<sup>10</sup>*Id.*

fore requiring their reporting.<sup>11</sup> Comparatively, the 2024 Rule mandates that all non-confidential employees have a duty to report *possible* sex-based harassment or sex discrimination to the IHE's Title IX Coordinator, or provide information to the victim of the harassment on how to contact that Coordinator.<sup>12</sup> The 2020 Rule presented schools with a Hobson's choice of standards of evidence, with wording that would invariably force victims of sex discrimination to prove their cases at a standard higher than that for other comparable harassment offenses (race, physical disability).<sup>13</sup> The 2024 Rule ensures that sex discrimination and sexual harassment claims would have standards of proof equivalent to those other harassment charges.<sup>14</sup> The 2024 Rule is a comprehensive improvement over the 2020 Rule in myriad ways, and H.J. Res. 165, if successful, would force schools and students back into an inequitable regime of enforcement that would allow recipients of federal funds to ignore all but the most severe and extreme forms of sex discrimination.

When the 2020 Rule was finalized, then-Chairman Bobby Scott (D-VA) joined with then-Chairman of the House Committee on the Judiciary Jerrold Nadler (D-NY) to issue the following statement, which will accurately describes what students will face if H.J. Res. 165 were to become law.

The Department's final Title IX rule creates new barriers to justice for survivors of sexual misconduct. It imposes a higher burden of proof for survivors—which is more challenging than the standard used in other civil rights laws and will be particularly difficult to meet given the nature of many sexual misconduct cases.

The rule finalized today also requires schools to address only the most severe and pervasive forms of sexual misconduct, and only if that misconduct is reported to a designated Title IX officer in postsecondary cases. Accordingly, institutions may now be permitted to overlook many instances of harassment that they were previously obligated to address.

Even when schools fail to fulfill their new, more limited obligations, the rule makes it unlikely that they will be held accountable. Only schools found to be 'deliberately indifferent' to complaints—rather than the existing standard that required 'prompt and effective action'—will be considered in violation of Title IX.

While the Department's stated intent was to secure due process for those accused of sexual misconduct, the actual effect of its rule will be to erode protections for students, weaken accountability for schools, and make it more dif-

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<sup>11</sup>See 85 Fed. Reg. 30574 (2020) (highlighting the standard under now-repealed 34 C.F.R. pt. 106.44).

<sup>12</sup>See 34 C.F.R. 106.44 (2024).

<sup>13</sup>See 85 Fed. Reg. 30575 (2020) (highlighting the standard under now-repealed 34 C.F.R. pt. 106.45).

<sup>14</sup>See 34 C.F.R. 106.45 (2024).

ficult for survivors seeking redress. Both the timing and substance of this rule are unacceptable.<sup>15</sup>

*The Women the Majority “Advocates” for Reject H.J. Res. 165*

The Majority claims H.J. Res. 165 is necessary to protect girls and women. This seems to fly directly in the face of statements from every major women’s advocacy group who denounced the Trump Rule when it was finalized in May 2020, and praised the 2024 Rule when it was issued. For example, the American Association of University Women said this in 2020:

In the best of times, the rule is ill-advised: It threatens to turn back the clock, reversing policies that were put in place to make it easier for survivors to report sexual misconduct. The rules will stack the deck against survivors, making it too onerous, even traumatic, for many to come forward. In short, the rule is antithetical to the fundamental promise of Title IX, that all students deserve access to an education free from sex discrimination.<sup>16</sup>

In 2024 when the rule was finalized, the President of the AAUW described the revised rule as “lifechanging” for college women.<sup>17</sup>

In 2020, the President of the National Women’s Law Center (NWLC) had this to say about the Trump rule:

[Department of Education Secretary] Betsy DeVos and the Trump Administration are dead set on making schools more dangerous for everyone—even during a global pandemic. Releasing this rule during the unprecedented challenges of COVID–19 unveils a disturbing set of priorities. And if this rule goes into effect, survivors will be denied their civil rights and will get the message loud and clear that there is no point in reporting assault. We refuse to go back to the days when rape and harassment in schools were ignored and swept under the rug. And we won’t let DeVos succeed in requiring schools to be complicit in harassment, turning Title IX from a law that protects all students into a law that protects abusers and harassers. We will fight this unlawful rule in the courts.<sup>18</sup>

In stark contrast, the NWLC joined with the AAUW and multiple civil rights groups to release the following statement in celebration of the 2024 Rule:

We commend the Biden administration for listening to the expert voices of students, advocates, parents, educators, and researchers, and for delivering on their com-

<sup>15</sup> Press Release, Rep. Bobby Scott, Scott, Nadler Statement on Education Department’s Final Title IX Rule (May 6, 2020), <https://bobbyscott.house.gov/media-center/press-releases/scott-nadler-statement-education-departments-final-title-ix-rule>.

<sup>16</sup> Press Release, Am. Ass’n of U. Women, AAUW Statement on Rollback of Title IX Protections (May 6, 2020), <https://www.aauw.org/resources/news/media/press-releases/aauw-statement-on-rolling-back-title-ix-protections/>.

<sup>17</sup> Press Release, Am. Ass’n of U. Women, AAUW Applauds Updated Title IX Rules from U.S. Department of Education (Apr. 19, 2020), <https://www.aauw.org/resources/news/media/press-releases/aauw-applauds-updated-title-ix-rules-from-u-s-department-of-education/>.

<sup>18</sup> Press Release, Nat’l Women’s L. Ctr., NWLC Responds to Department of Education’s Gutting of Protections For Sexual Assault Survivors (May 6, 2020), <https://nwlc.org/press-release/nwlc-responds-to-department-of-educations-gutting-of-protections-for-sexual-assault-survivors/>.



mitment to clarify Title IX's vital civil rights protections. By rescinding the Trump administration's harmful and restrictive sex harassment rule, and making protections clearer for survivors, pregnant and parenting students, and LGBTQIA+ students, this rule will ensure every student has the freedom to learn and to be themselves. We look forward to working with the Biden administration and school administrators to ensure the rule is implemented.<sup>19</sup>

*Facts the Majority Fears Admitting*

1. *The Supreme Court has held that discrimination "because of sex" includes discrimination based on sexual orientation and gender identity*

While the Majority attempted to align its support for H.J. Res. 165 with advocacy for women, this was quickly belied during debate on the bill. It became clear that the Majority's ire with the underlying rule was its insistence that sex discrimination includes discriminatory actions based on a person's sexual orientation and gender identity.<sup>20</sup> This determination is consistent with Supreme Court precedent, as we said earlier this Congress:

In 2020, the Supreme Court held in *Bostock v. Clayton County* that under a plain language interpretation of title VII of the *Civil Rights Act of 1964* (Title VII) discrimination based on an employee's sexual orientation or gender identity is indeed discrimination based on sex. This holding has since been applied to Title IX, which has been recognized to prevent discrimination on the basis of sexual orientation or gender identity. Courts across the country have held that Title IX requires schools to treat transgender students consistent with their gender identity. . . . The *Bostock* decision had immediate repercussions for Title IX. Although distinct statutes, federal courts have recognized that Title VII jurisprudence informs Title IX. As such, multiple Federal Courts of Appeal have post-*Bostock* held that discrimination "on the basis of sex" as defined by Title IX also includes discrimination based on sexual orientation or gender identity. The Departments of Justice and Education have both issued similar determinations.<sup>21</sup>

The excerpt above comes from the Minority Views accompanying the Committee Report on H.R. 734, the *Protection of Women and*

<sup>19</sup>Press Release, Nat'l Women's L. Ctr., Advocates for Gender Justice, Civil Rights, and Student Rights Respond to Biden Administration's Finalization of New Title IX Rule (Apr. 19, 2020), <https://nwlc.org/press-release/advocates-for-gender-justice-civil-rights-and-student-rights-respond-to-biden-administrations-finalization-of-new-title-ix-rule/>.

<sup>20</sup>*See, e.g.*, Press Release, Rep. Mary Miller, Rep. Mary Miller Introduces Legislation to Reverse Biden's Title IX Rule Which Violates Women and Girls' Private Spaces (June 5, 2024), <https://marymiller.house.gov/media/press-releases/rep-mary-miller-introduces-legislation-reverse-bidens-title-ix-rule-which> ("Joe Biden is undermining years of progress women have made in securing their rights under Title IX. For more than half a century, Title IX has protected women and girls, ensuring they have equal opportunities in education. However, the Biden Administration is putting our girls at risk by allowing men to access women and girls' bathrooms and locker rooms.")

<sup>21</sup>H.R. Rep. No. 118–135 at 16 (2023)(internal citations omitted).

*Girls in Sports Act of 2023*, discussed in fuller context below. In the time since those views were filed, there have been further rulings that suggest the *Bostock* holding applies to Title IX. Multiple federal circuit courts have held that following *Bostock*, the language of Title IX clearly includes discrimination based on sexual orientation and gender identity within its definition of “discrimination on the basis of sex”. The Supreme Court has declined requests to hear cases, and instead let these lower court cases stand.<sup>22</sup> Opponents of this interpretation are continuously looking to undermine this ruling, or wish it away. Multiple states have sought injunctions against the 2024 Rule, and last week, a federal court in Louisiana enjoined its enforcement in four states.<sup>23</sup> While this case makes its way through the federal courts, it is important to remember that the majority’s concerns with the 2024 Rule do not come from the rule itself, but from a holding of the conservative-leaning Supreme Court, written by a Justice appointed by former President Trump.

## 2. *Trans kids exist*

The Majority’s desperation to link H.J. Res. 165 with the need to protect “girls and women” hearkens back to the first bill the Committee marked up this Congress, H.R. 734, the *Protection of Women and Girls in Sports Act of 2023*. Much like H.J. Res. 165, the proponents of H.R. 734 made claims that their bill was necessary to protect girls and women sports, much to the dismay of women’s and girls’ sports advocates. In fact, this advocacy was mere window dressing attempting to justify what H.R. 734 was, an attack on transgender youth. What was true about H.R. 734 is equally true of H.J. Res. 165. Throughout the markup Majority members refused to even recognize that transgender students exist, using terms like “biological male” in an attempt to appear clinical but in actuality refusing to recognize that trans kids exist. We must again remind our colleagues what we said in 2023:

H.R. 734 is just one of many proposals that collectively aim to ostracize trans youth and trans individuals from the public arena. Research shows that due to stigma, trans youth experience depression and suicidal ideation at disproportionate rates compared to their peers. Recent data from the CDC show that transgender youth are 10 times more likely to experience homelessness. Transgender students are also more likely to feel unsafe at school, to experience bullying and other forms of violence including being threatened with a weapon at school, and social isolation. Experiences of a hostile school climate, potentially compounded by an unstable living situation, lead to disproportionate drop out rates for these students. Barriers to attaining school success have not inspired our Republican colleagues to create policies to improve outcomes for this group of students. Rather, around the country we see orga-

<sup>22</sup> Press Release, Am. C.L. Union, U.S. Supreme Court Declines to Hear Challenge to Title IX Victory for Transgender Rights (Jan. 16, 2024), <https://www.aclu.org/press-releases/u-s-supreme-court-declines-to-hear-challenge-to-title-ix-victory-for-transgender-rights>.

<sup>23</sup> Katherine Knott, Federal Judge Blocks Title IX Rule in Four States, *Inside Higher Ed*, June 14, 2024, <https://www.insidehighered.com/news/quick-takes/2024/06/14/federal-judge-blocks-new-title-ix-regulations-four-states--text=Finding%20that%20four%20states%20are,%2C%20Mississippi%2C%20Montana%20and%20Idaho>.

nized attacks against these students. In the first three months of 2023, more than 380 anti-transgender state bills have been introduced, including a bill in Florida that would remove transgender children from their homes if their parents support and affirm them.

Bills targeting curriculum inclusion, often referenced as “Don’t Say Gay” bills, censor teacher’s speech by prohibiting mention of LGBTQ people or gender diversity in their classrooms. The American Library Association reports that attempts to ban books in schools are up four-fold with the top three most banned books addressing themes of transgender identity or gender non-conformity. Twenty states now prohibit transgender students from participating in school sports aligned with their gender. The focus of these coordinated attacks was made all the more clear in early March 2023, when a speaker announced from the Conservative Political Action Conference stage that “transgenderism must be eradicated from public life entirely.” This bill is an attempt to draw the federal government into the on-going GOP attacks on transgender people. Discriminating against a specific minority group with whom the Majority disagrees cannot be a legitimate governmental interest.<sup>24</sup>

#### CONCLUSION

H.J. Res. 165 is another attempt by House Republicans to attack the Biden Administration, this time simply for promulgating a rule that will ensure that education programs that receive federal assistance fully live up to requirements in federal law to not discriminate on the basis of sex. It is also another attack on the transgender community, using the safety of girls to justify legislated animus against a group of students merely trying to learn without facing discrimination. Consideration of H.J. Res. 165 was not a worthwhile use of this Committee’s time.

The week prior to the Committee’s consideration of H.J. Res. 165, Cobalt Sovereign, a 17-year old transgender girl, was assaulted at her Minnetonka, Minnesota high school after using the boy’s restroom, the option proponents of H.J. Res. 165 suggest she *should* be doing, to protect women and girls. Commenting on this incident, which left her with a broken jaw, Cobalt said, “I try to use any general neutral or family restroom options if they’re available but when I’m not given that option I . . . use the men’s restroom because it’s what makes everybody around me the least amount of uncomfortable and making other people uncomfortable is something that I tried not to do.”<sup>25</sup>

The 2024 Title IX Rule recognizes Cobalt was the victim of sex discrimination. H.J. Res. 165 would say she is not. For the reasons stated above, all Committee Democrats present unanimously op-

<sup>24</sup> H.R. Rep. No. 118–135 at 22–23 (2023) (emphasis added, internal citations omitted).

<sup>25</sup> Matt Lavietes, Transgender Teen Hospitalized After Alleged Attack in High School Bathroom, NBC News (June 7, 2024), <https://www.nbcnews.com/nbc-out/out-news/transgender-teen-hospitalized-alleged-attack-high-school-bathroom-rena156105>; Chandelis Duster & Justin Gamble, Father of transgender teen attacked in school says attackers should face criminal charges, CNN (June 7, 2024), <https://www.cnn.com/2024/06/07/us/cobalt-sovereign-minnesota-transgender-student-reaaj/index.html>.

posed H.J. Res. 165 when the Committee on Education and the Workforce considered it on June 13, 2024. We urge the House of Representatives to do the same.

ROBERT C. “BOBBY” SCOTT,  
*Ranking Member.*  
 RAÚL GRIJALVA,  
 JOE COURTNEY,  
 FREDERICA S. WILSON,  
 SUZANNE BONAMICI,  
 MARK TAKANO,  
 ALMA S. ADAMS,  
 MARK DESAULNIER,  
 PRAMILA JAYAPAL,  
 JAHANA HAYES,  
 FRANK J. MRVAN,  
*Members of Congress.*

