

117TH CONGRESS  
1ST SESSION

# H. R. 1440

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2021

Mr. STEWART (for himself, Mr. KINZINGER, Mr. GARBARINO, Mr. MOORE of Utah, Mr. FITZPATRICK, Mr. OWENS, Mr. GIMENEZ, Mr. JACOBS of New York, Ms. TENNEY, Ms. STEFANIK, Mr. UPTON, Mr. VAN DREW, Miss GONZÁLEZ-COLÓN, Mr. CURTIS, Ms. SALAZAR, Mr. DIAZ-BALART, Mr. AMODEI, Mr. SIMPSON, Ms. MALLIOTAKIS, Mr. STIVERS, and Mr. REED) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and Labor, Oversight and Reform, House Administration, Financial Services, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for All Act”.

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

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

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

9 (2) in subsection (b)—

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

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

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

16 “(4) any place of exercise, recreation, or amusement,  
17 except religious camps or religious retreat centers unless  
18 such camps or retreat centers discriminate because of  
19 race, color, or national origin;

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

23 “(6) for the purpose of classifications enumerated in  
24 subsection (a) and not described by section 1557 of the  
25 Patient Protection and Affordable Care Act (42 U.S.C.  
26 18116(a))—

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

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

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

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

1 “(7) any place of or provider of transportation serv-  
2 ices;

3 “(8) any provider of funeral services or burial plots,  
4 except those that primarily limit their services or facilities  
5 to those of a particular religion, unless such provider dis-  
6 criminate because of race, color, or national origin;

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

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

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

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

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

1           “(iii) a religious educational institution  
2           and its appurtenant properties used primarily  
3           for religious purposes;

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

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

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

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

24                 “(ii) a property owned or operated pri-  
25                 marily for noncommercial purposes by a non-

1 profit religious corporation that holds itself out  
2 to the public as substantially religious, has as  
3 its stated purpose in its organic documents that  
4 it is religious, and is substantially religious in  
5 its current operations.

6 “(C) Subparagraphs (A) and (B) shall not  
7 apply to a person or entity that discriminates be-  
8 cause of race, color, or national origin with respect  
9 to a property or facility enumerated in subparagraph  
10 (A) or (B).

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

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

1           “(B) a place of public accommodation shall  
2           reasonably accommodate a patron who requests  
3           greater privacy within a facility intended for the  
4           exclusive use of persons of the same sex.

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

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

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

17                 “(1) The term ‘gender identity’ means the gen-  
18                 der-related identity, appearance, mannerisms, or  
19                 other gender-related characteristics of an individual,  
20                 without regard to the individual’s designated sex at  
21                 birth. A person’s gender identity can be shown by  
22                 providing evidence, including medical history, care or  
23                 treatment of the gender identity, consistent and uni-  
24                 form assertion of the gender identity, or other evi-  
25                 dence that the gender identity is sincerely held, part

1 of a person’s core identity, and not being asserted  
2 for an improper purpose.

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

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

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

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

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

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



1 by a particular religion or by a particular  
2 church, denomination, convention, or associa-  
3 tion of churches or other houses of worship; or

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

11 “(g) ADDITIONAL FACILITIES NOT REQUIRED.—  
12 Nothing in this title shall be construed to require the con-  
13 struction of new or additional facilities.”

14 **SEC. 3. PROHIBITION ON DISCRIMINATION IN FEDERALLY**  
15 **FUNDED PROGRAMS.**

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

18 (1) in section 601, by inserting “sex, sexual ori-  
19 entation, gender identity,” before “or national ori-  
20 gin.”;

21 (2) in section 601, by adding at the end the fol-  
22 lowing:

23 “Nothing in sections 602 through 614 of this title shall  
24 be construed to alter or amend this section with respect

1 to discrimination on the ground of race, color, or national  
2 origin.”;

3 (3) in section 606, by striking “For the pur-  
4 poses of this title” and inserting “Subject to section  
5 607, for the purposes of this title”; and

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

7 **“SEC. 607. PROGRAM OR ACTIVITY AND PROGRAM DEFINED**  
8 **FOR PURPOSES OF RELIGIOUS ENTITIES AS**  
9 **APPLIED TO SEX, SEXUAL ORIENTATION, OR**  
10 **GENDER IDENTITY.**

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

21 **“SEC. 608. SAFEGUARDS FOR RELIGIOUS ORGANIZATIONS**  
22 **RECEIVING ASSISTANCE.**

23 “(a) IN GENERAL.—An otherwise qualified religious  
24 provider shall be eligible to receive Federal financial as-  
25 sistance for a particular service without regard to the pro-

1 vider’s religious views or teachings, notwithstanding sec-  
2 tion 2000d. Subject to this title, a religious organization  
3 that applies for, or participates in, a program or activity  
4 receiving Federal financial assistance shall retain its inde-  
5 pendence and may continue to carry out its mission, in-  
6 cluding the definition, development, and expression of its  
7 religious beliefs.

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

19       “(c) EDUCATIONAL AND CHILDCARE INSTITU-  
20 TIONS.—A religious educational institution or daycare  
21 center may enforce with reasonable consistency written re-  
22 ligious standards in its admission criteria, educational pro-  
23 grams, student retention policies, or residential life policy,  
24 unless those standards would exclude or remove a student  
25 solely because of a prohibited classification under section

1 601 with respect to that student’s parent or legal guard-  
2 ian.

3 “(d) MARRIAGE AND FAMILY EDUCATION,  
4 STRENGTHENING, AND COUNSELING PROGRAMS.—For  
5 purposes of sexual orientation and gender identity, a reli-  
6 gious corporation, association, educational institution, or  
7 society receiving Federal financial assistance shall be  
8 deemed in compliance with section 601 notwithstanding  
9 the content of any marriage or family education, strength-  
10 ening, or counseling programming, provided that the re-  
11 cipient does not exclude beneficiaries on the basis of sexual  
12 orientation or gender identity.

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

22 “(2) AGENCY RESPONSIBILITIES.—Each agency  
23 responsible for administering or supporting a social  
24 service program with Federal financial assistance

1 shall establish policies and procedures designed to  
2 ensure that—

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

5 “(B) all referrals are made in a manner  
6 consistent with all applicable privacy laws and  
7 regulations;

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

10 “(D) such recipient has established a proc-  
11 ess for determining whether the beneficiary has  
12 contacted the alternative provider; and

13 “(E) each beneficiary of a marriage or  
14 family education, strengthening, or counseling  
15 program that receives Federal financial assist-  
16 ance receives written notice of the protections  
17 set forth in this section prior to enrolling in or  
18 receiving services from such program.

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

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

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

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

2           “(D) has established a process for deter-  
3           mining whether the beneficiary has contacted  
4           the alternative provider; and

5           “(E) can demonstrate that each bene-  
6           ficiary of a social service program received writ-  
7           ten notice of the protections set forth in this  
8           section prior to enrolling in or receiving services  
9           from such program.

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

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

24       “(b) For the purposes of this subsection, a religious  
25       educational institution or daycare center that receives

1 funds under the Richard B. Russell National School  
2 Lunch Act shall not be deemed a recipient of Federal fi-  
3 nancial assistance.

4 **“SEC. 610. FEDERAL FINANCIAL ASSISTANCE FOR ADOPT-**  
5 **TION AND FOSTER CARE.**

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

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

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

22           “(3) By providing safe and welcoming homes to  
23 vulnerable children, adoptive and foster care parents  
24 serve the best interests of children and contribute to  
25 the common good of our communities in ways that

1 are irreplaceable. Such parents should be empowered  
2 to adopt children based on their merits as parents,  
3 without being thwarted by discriminatory obstacles.

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

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

19 “(6) Therefore, it is the policy of the Federal  
20 Government to protect the best interests of at-risk  
21 children by establishing minimum Federal standards  
22 that guarantee the equal treatment of qualified fam-  
23 ilies seeking to offer foster care or adoption and an  
24 equal respect for the diversity of private agencies,  
25 including religious agencies, that provide adoption



1 and foster care services. This section shall be con-  
2 strued in a manner consistent with these findings  
3 and declaration of policy.

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

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

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

1 the qualified prospective adoptive or foster par-  
2 ent or of the child involved;

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

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

16 “(D) requiring a qualified prospective fos-  
17 ter parent to subscribe to subparagraph (D) or  
18 (E) of section (b)(2); or

19 “(E) excluding a qualified prospective  
20 adoptive or foster parent because of the par-  
21 ent’s religion.

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

24 “(A) denying to any qualified person equal  
25 access to or equal treatment during the adop-

1           tion or foster care evaluation and placement  
2           process because of the race, color, national ori-  
3           gin, sex, sexual orientation, or gender identity  
4           of the qualified prospective adoptive or foster  
5           parent, or of the child involved;

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

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

19          “(D) treating a child in the legal custody  
20          of the State inconsistently with the child’s gen-  
21          der identity, as demonstrated by the child’s  
22          medical history, care or treatment of the child’s  
23          gender identity, consistent and uniform asser-  
24          tion of the gender identity, or other evidence  
25          that the gender identity is sincerely held, is

1 part of the child’s core identity, and is not  
2 being asserted for an improper purpose; or

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

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

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

1           “(A) This indirect funding program will  
2 entitle a qualified State resident to receive a  
3 certificate to assist with the costs of a personal  
4 assessment, background check, home study, en-  
5 dorsement, certification of a person’s eligibility  
6 to act as the guardian of a child in foster care  
7 or as the parent of a child available for adop-  
8 tion, and placement of a child with an eligible  
9 individual or family.

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

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

23           “(D) Participation in this indirect funding  
24 program may not be delayed or denied because  
25 of a State resident’s race, color, national origin,

1 religion, sex, sexual orientation, or gender iden-  
2 tity.

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

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

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

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

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

22 “(2) IMPLEMENTATION OF INDIRECT FUNDING  
23 PROGRAM.—

24 “(A) APPROVED STATE PLAN.—To be eli-  
25 gible for Federal financial assistance for adop-

1           tion or foster care services under part B or part  
2           E of title IV of the Social Security Act, a State  
3           must develop a written plan approved by the  
4           Secretary of the Department of Health and  
5           Human Services providing that—

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

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

1 ing to serve all qualified prospective par-  
2 ents;

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

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

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



1           “(vi) when a qualified individual seek-  
2           ing adoption or foster care placement or  
3           related services is unable to obtain such  
4           services from a particular provider—

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

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

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

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

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

22                   “(i) deny any licensed provider of  
23                   adoption or foster care placement or re-  
24                   lated services the opportunity to partici-

1           pate in the certificate program prescribed  
2           by subsection (c)(1);

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

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

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

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

14           “(d) PRIVATE RECIPIENTS OF FEDERAL FINANCIAL  
15 ASSISTANCE.—

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

22           “(A) decline to accept a certificate without  
23 being obligated to perform a particular service,  
24 despite receiving certificates to perform other  
25 covered adoption or foster care services, so long

1 as the provider gives a referral to the certificate  
2 holder consistent with section (c)(2)(A)(vi)(II)–  
3 (IV); or

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

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

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

1 whom the provider has previously endorsed or with  
2 whom the provider has placed a child.

3 “(e) MISCELLANEOUS.—

4 “(1) CUSTODY OF CHILD IN FOSTER CARE.—

5 For purposes of this section, a child in foster care  
6 shall be deemed to be in the legal custody of the  
7 State.

8 “(2) RULE OF CONSTRUCTION.—Nothing in

9 this section shall be construed to prohibit an entity  
10 receiving Federal financial assistance for adoption,  
11 foster care, or related services from making an indi-  
12 vidualized placement assessment in the best interest  
13 of the child’s health, safety, and welfare.

14 “(3) EFFECTIVE DATES.—

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

19 “(B) RELIGIOUS PROVIDER EXEMPTION.—

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

1           “(ii) If the certificate program is not  
2 substantially funded as required by sub-  
3 section (c), the protections described by  
4 subsection (b)(1) shall become unenforce-  
5 able as to a religious adoption or foster  
6 care provider until funding is provided or  
7 restored.

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

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

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

25           “(4) PRIVATE RIGHTS OF ACTION.—

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

5           “(B) A private right of action may be  
6           brought by a private organization under section  
7           1107.

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

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

21          “(7) APPLICATION TO STATES WITH WAIV-  
22          ERS.—For any State that, on the date of enactment  
23          of this Act, has in effect a waiver approved under  
24          section 1130 of the Social Security Act (42 U.S.C.  
25          1320a-9), the amendments to this title shall not

1 apply to that State before the expiration of the waiv-  
2 er (determined without regard to any extensions), to  
3 the extent that an amendment is inconsistent with  
4 the terms of the waiver.

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

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

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

20 “(b) An educational institution receiving Federal fi-  
21 nancial assistance shall reasonably accommodate a student  
22 who requests greater privacy with respect to the use of  
23 a facility designated for the exclusive use of persons of  
24 the same sex, provided that the accommodation does not  
25 exclude any student from such a facility to which the stu-



1 dent has a right of access or otherwise prejudice any right  
2 or privilege protected under this title.

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

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

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

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

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

23 **“SEC. 614. ADDITIONAL DEFINITIONS.**

24 “For purposes of this title:

1           “(1) The term ‘gender identity’ means the gen-  
2           der-related identity, appearance, mannerisms, or  
3           other gender-related characteristics of an individual,  
4           without regard to the individual’s designated sex at  
5           birth. A person’s gender identity can be shown by  
6           providing evidence, including medical history, care or  
7           treatment of the gender identity, consistent and uni-  
8           form assertion of the gender identity, or other evi-  
9           dence that the gender identity is sincerely held, part  
10          of a person’s core identity, and not being asserted  
11          for an improper purpose.

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

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

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

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

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

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

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

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

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

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

1 **SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.**

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

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

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

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

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

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

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

1 of the practices described in this subparagraph re-  
2 strict the ability to wear religious clothing, to take  
3 time off for a holy day, or to participate in a reli-  
4 gious observance or practice.

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

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

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

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

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

24 “(iv) whether the accommodation will  
25 obstruct the employer from providing its

1 customers or clients the full and equal en-  
2 joyment of the goods, services, facilities,  
3 privileges, advantages, and accommoda-  
4 tions offered.

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

10 (5) by inserting after subsection (n) the fol-  
11 lowing:

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

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

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

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

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

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

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

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

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

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

1 “State.

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

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

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

9 “(i) a church or its integrated auxiliaries,  
10 a convention or association of churches, or a re-  
11 ligious order, as described in section  
12 6033(a)(3)(A)(i) and section 6033(a)(3)(A)(iii)  
13 of the Internal Revenue Code of 1986;

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

19 “(iii) a religious educational institution  
20 that is eligible for exemption under section  
21 703(e)(2) of this subchapter;

22 “(iv) a religious corporation, association,  
23 or society under section 702(a) of this sub-  
24 chapter that is eligible for tax-exempt status  
25 under section 501(c)(3) of the Internal Revenue



1 Code of 1986 and that employs only individuals  
2 of the employer's religion, unless the employee  
3 demonstrates that the employer has not applied  
4 with reasonable consistency its religious stand-  
5 ard cited as the reason for the adverse employ-  
6 ment action; or

7 “(v) any association exclusively composed  
8 of employers exempt under paragraph  
9 (2)(B)(i)–(iv).

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

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

1 treatment is consistent with section  
2 501(c)(3)(B) of that Code.

3 “(E) No employer whose primary purpose  
4 and activity is to deliver medical services shall  
5 be eligible for the exemptions under section  
6 702(a)(2)(B).

7 “(F) Nothing in this section shall prejudice  
8 rights and defenses available under sections  
9 702(a) and 703(e)(2).”.

10 (c) UNLAWFUL EMPLOYMENT PRACTICES.—Section  
11 703 of such Act (42 U.S.C. 2000e–2) is amended—

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

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

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

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

24 “(o)(1) In this section:

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

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

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

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

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

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

1 to accommodate the religious observance or practice of the  
2 employee.”.

3 (d) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—  
4 Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.  
5 2000e-3) is amended—

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

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

14 (3) by inserting after subsection (b) the fol-  
15 lowing:

16 “(c) PROHIBITED SANCTIONS FOR CERTAIN EM-  
17 PLOYEE SPEECH.—

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

1           “(2) An employer may not discharge, demote,  
2 terminate, or refuse to hire any person, or retaliate  
3 against, harass, or discriminate in matters of com-  
4 pensation or in terms, privileges, and conditions of  
5 employment against any person otherwise qualified  
6 for employment, for lawful expression or expressive  
7 activity outside of the workplace regarding the per-  
8 son’s beliefs that—

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

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

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

19           “(3) Paragraphs (1) and (2) shall not apply to  
20 a nonprofit organization that operates to express or  
21 advocate particular viewpoints, or to an employer  
22 that is a religious corporation, association, edu-  
23 cational institution, or society covered by section  
24 701(o)(4).”.

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

5 (f) EMPLOYMENT BY FEDERAL GOVERNMENT.—Sec-  
6 tion 717 of the Civil Rights Act of 1964 (42 U.S.C.  
7 2000e-16) is amended—

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

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

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

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

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

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

1       “SEC. 719. Nothing in this subchapter shall be con-  
2       strued to require the construction of new or additional fa-  
3       cilities.”.

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

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

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

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

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

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

4 (2) in section 2302—

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

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

11 **SEC. 5. HOUSING DISCRIMINATION PROHIBITED.**

12 (a) IN GENERAL.—

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

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

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



1           (4) Section 807 of the Fair Housing Act (42  
2           U.S.C. 3607) is amended by inserting “or to persons  
3           who adhere to its religion” immediately after the  
4           phrase “persons of the same religion” and “or ad-  
5           herence to such beliefs, observances, tenets, or prac-  
6           tices” immediately before “or from giving preference  
7           to such persons”.

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

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

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

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

21           “(q) ‘Gender identity’ means the gender-related iden-  
22          tity, appearance, mannerisms, or other gender-related  
23          characteristics of an individual, without regard to the indi-  
24          vidual’s designated sex at birth. A person’s gender identity  
25          can be shown by providing evidence, including medical his-

1 tory, care or treatment of the gender identity, consistent  
2 and uniform assertion of the gender identity, or other evi-  
3 dence that the gender identity is sincerely held, part of  
4 a person’s core identity, and not being asserted for an im-  
5 proper purpose.

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

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

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

14 **SEC. 6. OTHER NONDISCRIMINATION REQUIREMENTS.**

15 (a) MARRIAGE RECOGNITION.—

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

18 **“§ 7. Marriage**

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

1       “(b) In this section, the term ‘State’ means a State,  
2 the District of Columbia, the Commonwealth of Puerto  
3 Rico, or any other territory or possession of the United  
4 States.”.

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

10       (b) DESEGREGATION OF PUBLIC FACILITIES.—Sec-  
11 tion 301(a) of the Civil Rights Act of 1964 (42 U.S.C.  
12 2000b(a)) is amended by inserting “sex, sexual orienta-  
13 tion, gender identity,” before “or national origin”.

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

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

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

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

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

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

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

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

19           (2) in section 702—

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

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

24       “(f) The term ‘gender identity’ means the gender-re-  
25 lated identity, appearance, mannerisms, or other gender-

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

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

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

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

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

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

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

2           **“SEC. 4701. PURPOSE.**

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

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

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

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

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

19           “(A) that is sufficiently severe, persistent,  
20 or pervasive that a reasonable person would ex-  
21 pect such bullying or harassment to limit a stu-  
22 dent’s ability to participate in, or benefit from,  
23 a program or activity of a public school or local  
24 educational agency; or

25           “(B) that is sufficiently severe, persistent,  
26 or pervasive that a reasonable person would ex-

1           pect such bullying or harassment to create a  
2           hostile or abusive educational environment, ad-  
3           versely affecting a student’s education, at a  
4           program or activity of a public school or local  
5           educational agency, including acts of verbal,  
6           nonverbal, or physical aggression or intima-  
7           tion.

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

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

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

18                 “(C) any other distinguishing characteris-  
19                 tics that may be defined by the State or local  
20                 educational agency, including being homeless or  
21                 the child or ward of a member of the Armed  
22                 Forces.

23          “(3) Provide—

24                 “(A) annual notice to students, parents,  
25                 and educational professionals describing the full

1 range of the local educational agency’s policies  
2 required under paragraph (1) and shall include  
3 an affirmative statement of the protections for  
4 free speech, assembly, and expression under the  
5 First Amendment and any other applicable law;  
6 and

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

11 “(i) the name of the local educational  
12 agency officials who are designated as re-  
13 sponsible for receiving such complaints;  
14 and

15 “(ii) timelines that the local edu-  
16 cational agency will establish in the resolu-  
17 tion of such complaints.

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



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

6   **“SEC. 4703. STATE REPORTS.**

7           “The chief executive officer of a State that receives  
8           a grant under this title, in cooperation with the State edu-  
9           cational agency, shall submit a biennial report to the Sec-  
10          retary—

11           “(1) on the information reported by local edu-  
12          cational agencies in the State pursuant to section  
13          4702(b)(4); and

14           “(2) describing the State’s plans for supporting  
15          local educational agency efforts to address the con-  
16          duct prohibited by the policies described in section  
17          4702(b)(1).

18   **“SEC. 4704. EVALUATION.**

19           “(a) BIENNIAL EVALUATION.—The Secretary shall  
20          conduct an independent biennial evaluation of programs  
21          and policies to combat bullying and harassment in elemen-  
22          tary schools and secondary schools, including implementa-  
23          tion of the requirements described in section 4702, includ-  
24          ing whether such requirements have appreciably reduced  
25          the level of the prohibited conduct and have conducted ef-

1 fective parent involvement and programs that train cov-  
2 ered school employees how to identify and stop bullying  
3 and harassment, as those terms are defined in section  
4 4702.

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

10 “(c) BIENNIAL REPORT.—Not later than January 1  
11 of the first calendar year that begins after the effective  
12 date of this section and every 2 years thereafter, the Sec-  
13 retary shall submit to the President and Congress a report  
14 on the findings of the evaluation conducted under sub-  
15 section (a) together with the data collected under sub-  
16 section (b) and data submitted by the States under section  
17 4703.

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

19 “(a) FEDERAL AND STATE NONDISCRIMINATION  
20 LAWS.—Nothing in this part shall be construed to invali-  
21 date or limit rights, remedies, procedures, or legal stand-  
22 ards available to victims of discrimination under any other  
23 Federal law or law of a State or political subdivision of  
24 a State, including title VI of the Civil Rights Act of 1964  
25 (42 U.S.C. 2000d et seq.), title IX of the Education

1 Amendments of 1972 (20 U.S.C. 1681 et seq.), section  
2 504 or 505 of the Rehabilitation Act of 1973 (29 U.S.C.  
3 794, 794a), or the Americans with Disabilities Act of 1990  
4 (42 U.S.C. 12101 et seq.). The obligations imposed by this  
5 part are in addition to those imposed by title VI of the  
6 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title  
7 IX of the Education Amendments of 1972 (20 U.S.C.  
8 1681 et seq.), section 504 of the Rehabilitation Act of  
9 1973 (29 U.S.C. 794), and the Americans with Disabil-  
10 ities Act of 1990 (42 U.S.C. 12101 et seq.).

11       “(b) **FREE SPEECH AND EXPRESSION.**—Nothing in  
12 this part shall be construed to deny any student a right  
13 of free speech, assembly, or expression protected under the  
14 Constitution or any other Federal law, or to permit unlaw-  
15 ful viewpoint discrimination. No policy established under  
16 this part may prevent or punish a student’s expression of  
17 religious, political, or philosophical beliefs in the classroom  
18 or at school activities when such expression takes place  
19 on equal terms with similar expressions of belief allowed  
20 by the school in the same setting, unless such expression  
21 consists of bullying or harassment as defined in section  
22 4702(b)(1).

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

24       “Nothing in this part shall be construed to prohibit  
25 a State or local entity from enacting any law with respect

1 to the prevention of bullying or harassment of students  
2 that is not inconsistent with this part.”.

3 **SEC. 7. PROHIBITION ON RETALIATION AND UNEQUAL**  
4 **TREATMENT.**

5 Title XI of the Civil Rights Act of 1964 (42 U.S.C.  
6 2000h et seq.) is amended by adding at the end the fol-  
7 lowing:

8 **“SEC. 1107. NONRETALIATION.**

9 “(a) IN GENERAL.—

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

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

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

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

20 “(b) PROHIBITION ON CERTAIN GOVERNMENT AC-  
21 TIONS.—

22 “(1) PERSONS PROTECTED FROM DISCRIMINA-  
23 TION.—No government shall take any adverse action  
24 that, as applied, conflicts with any protection from  
25 discrimination under this Act.

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

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

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

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

14          “(3) ADOPTION AND FOSTER CARE FUNDING,  
15          LICENSURE, AND CERTIFICATION.—No State shall  
16          enforce a law with respect to a particular contract,  
17          cooperative agreement, grant, guarantee, or benefit  
18          if that law, as applied, abridges any right or benefit  
19          under section 610, unless the State demonstrates  
20          that the contract, cooperative agreement, grant,  
21          guarantee, or benefit is solely funded by revenues of  
22          a State or political subdivision thereof. A State or  
23          its political subdivision may commingle its revenues  
24          with Federal financial assistance for the purpose of  
25          providing financial aid to adoption agencies; such

1 commingled revenues shall be deemed Federal finan-  
2 cial assistance. No government may deny, withhold,  
3 or suspend the license or certification of a religiously  
4 affiliated adoption or foster care agency because of  
5 its religious teachings or practices, provided that the  
6 agency complies with generally applicable health and  
7 safety standards.

8 “(c) RELIGIOUS EDUCATIONAL INSTITUTIONS.—

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

14 “(2) ACCREDITATION.—No accrediting agency  
15 shall take an adverse action against a religious edu-  
16 cational institution for noncompliance with an ac-  
17 creditation standard that would require the institu-  
18 tion to act inconsistently with its religious mission  
19 as related to marriage, family, sexuality, or gender  
20 identity, except as these matters pertain to race,  
21 color, or national origin. Nothing in this provision  
22 shall be interpreted to deny an accrediting agency  
23 the authority under section 496(a) of the Higher  
24 Education Act (20 U.S.C. 1099b(a)) to take action  
25 necessary to ensure that the courses or programs of

1 instruction, training, or study offered by an institu-  
2 tion of higher education are of sufficient quality to  
3 achieve the stated objective for which the courses or  
4 the programs are offered. An accrediting agency  
5 does not demonstrate that its adverse action against  
6 a religious educational institution is authorized  
7 under section 1099b(a) merely by showing that the  
8 action results from a rule of general applicability.

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

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

1           “(1) exclude a person from an occupation by  
2           depriving a person of professional credentials or im-  
3           posing a fine or penalty, including through a private  
4           right of action, because of the person’s religious be-  
5           liefs or affiliations, provided that the person other-  
6           wise complies with occupational or professional  
7           standards that, in purpose and effect, are neutral to-  
8           ward religion and generally applicable; or

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

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

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

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

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

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



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

3           “(f) JUDICIAL RELIEF.—

4           “(1) CAUSE OF ACTION.—A person or organiza-  
5 tion may assert an actual violation of this section,  
6 or a credible threat of such a violation, as a claim  
7 or defense in a judicial, administrative, or arbitra-  
8 tion proceeding and obtain appropriate relief against  
9 a government or accrediting agency, including attor-  
10 neys’ fees. A State shall not be immune under the  
11 Eleventh Amendment to the Constitution of the  
12 United States from a claim under this section.

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

19           “(g) DEFINITIONS.—In section 1107:

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

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

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

7           “(4) The term ‘adverse action’ includes action  
8           that suspends, revokes, or withholds licenses, per-  
9           mits, certifications, professional credentials, guaran-  
10          tees, contracts, or cooperative agreements; denies or  
11          revokes scholarships, grants, loans, a tax exemption  
12          or tax-exempt status; denies access to government-  
13          sponsored facilities, activities, or programs; or that  
14          imposes any other penalty or denies an otherwise  
15          available benefit. Except for a violation of subsection  
16          (a)(1) of this section, adverse action does not include  
17          a State’s refusal to subsidize contracts, grants,  
18          loans, or cooperative agreements with exclusively  
19          State revenues because of noncompliance with State  
20          standards that, in purpose and effect, are neutral to-  
21          ward religion and generally applicable. Commingled  
22          State and Federal revenues shall be deemed Federal  
23          revenues. Adverse action does include suspending,  
24          revoking, or withholding scholarships, grants, and  
25          loans, or access to government-sponsored facilities,

1 activities, or programs to qualified students or grad-  
2 uates of religious educational institutions, notwith-  
3 standing that the scholarships, grants, loans, facili-  
4 ties, activities, or programs are funded with State  
5 revenues.

6 “(5) The term ‘government’ means—

7 “(A) a State, county, municipality, or  
8 other government entity created under the au-  
9 thority of a State;

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

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

15 “(D) the United States, a branch, depart-  
16 ment, agency, instrumentality, or official of the  
17 United States, and any other person acting  
18 under color of Federal law.

19 “(6) The terms ‘religion’ and ‘religious’ include  
20 all aspects of religious belief, observance, and prac-  
21 tice, whether or not compelled by, or central to, a  
22 system of religion.

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

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

3           “(B) a nonprofit corporation, association,  
4           educational institution, society, or other non-  
5           profit entity that is, in whole or in substantial  
6           part, owned, supported, controlled, or managed  
7           by a particular religion or by a particular  
8           church, denomination, convention, or associa-  
9           tion of churches or other houses of worship; or

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

17          “(8) The term ‘religious educational institution’  
18          means any organization covered by section  
19          703(e)(2).

20          “(9) The term ‘religious mission’ includes reli-  
21          gious affiliation, religious tenets, religious teachings,  
22          and religious standards, including policies or deci-  
23          sions related to such affiliation, tenets, teachings, or  
24          standards with respect to housing, employment, cur-  
25          riculum, self-governance, or student admission, con-

1       tinuing enrollment, or graduation, unless such affili-  
2       ation, tenets, teachings, or standards result in invid-  
3       ious discrimination on account of race, color, or na-  
4       tional origin.

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

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

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

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

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

17             “(B)(i) For purposes of Federal law, any deter-  
18       mination whether an organization is organized or op-  
19       erated exclusively for religious, charitable, scientific,  
20       literary, or educational purposes or complies with  
21       legal standards of charity shall be made without re-  
22       gard to the organization’s religious beliefs or prac-  
23       tices concerning marriage, family, or sexuality, ex-  
24       cept insofar as such practices pertain to race or

1 criminal sexual offenses punishable under constitu-  
2 tionally valid Federal or State law.

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

7 **SEC. 9. SEVERABILITY.**

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

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