

116TH CONGRESS  
2D SESSION

# H. R. 8698

To amend the Civil Rights Act of 1964 to clarify that disparate impacts on certain populations constitute a sufficient basis for rights of action under such Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 2020

Ms. TLAIB (for herself, Mr. KENNEDY, and Ms. HAALAND) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, 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 amend the Civil Rights Act of 1964 to clarify that disparate impacts on certain populations constitute a sufficient basis for rights of action under such Act, and for other purposes.

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 “Justice for All Act  
5 of 2020”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) This Act is made necessary by a decision of  
4 the Supreme Court in *Alexander v. Sandoval*, 532  
5 U.S. 275 (2001) that significantly impairs statutory  
6 protections against discrimination that Congress has  
7 erected over a period of almost 4 decades. The  
8 *Sandoval* decision undermines these statutory pro-  
9 tections by stripping victims of discrimination (de-  
10 fined under regulations that Congress required Fed-  
11 eral departments and agencies to promulgate to im-  
12 plement title VI of the Civil Rights Act of 1964 (42  
13 U.S.C. 2000d et seq.)) of the right to bring action  
14 in Federal court to redress the discrimination.

15 (2) The *Sandoval* decision contradicts settled  
16 expectations created by title VI of the Civil Rights  
17 Act of 1964, title IX of the Education Amendments  
18 of 1972 (also known as the “Patsy Takemoto Mink  
19 Equal Opportunity in Education Act”) (20 U.S.C.  
20 1681 et seq.), the Age Discrimination Act of 1975  
21 (42 U.S.C. 6101 et seq.), and section 504 of the Re-  
22 habilitation Act of 1973 (29 U.S.C. 794) (collec-  
23 tively referred to in this Act as the “covered civil  
24 rights provisions”). The covered civil rights provi-  
25 sions were designed to establish and make effective  
26 the rights of persons to be free from discrimination

1 on the part of entities that are subject to 1 or more  
2 of the covered civil rights provisions, as appropriate  
3 (referred to in this Act as “covered entities”). In  
4 1964 Congress adopted title VI of the Civil Rights  
5 Act of 1964 to ensure that Federal dollars would not  
6 be used to subsidize or support programs or activi-  
7 ties that discriminated on racial, color, or national  
8 origin grounds. In the years that followed, Congress  
9 extended these protections by enacting laws barring  
10 discrimination in federally funded education activi-  
11 ties on the basis of sex in title IX of the Education  
12 Amendments of 1972, and discrimination in feder-  
13 ally funded activities on the basis of age in the Age  
14 Discrimination Act of 1975 and disability in section  
15 504 of the Rehabilitation Act of 1973.

16 (3) All of the statutes cited in this section were  
17 designed to protect persons subject to discrimina-  
18 tion. As Congress has consistently recognized, effec-  
19 tive enforcement of the statutes and protection of  
20 the rights guaranteed under the statutes depend  
21 heavily on the efforts of private attorneys general.  
22 Congress acknowledged that it could not secure com-  
23 pliance solely through administrative efforts and en-  
24 forcement actions initiated by the Attorney General.

1 Newman v. Piggie Park Enterprises, 390 U.S. 400  
2 (1968) (per curiam).

3 (4) The Supreme Court has made it clear that  
4 individuals suffering discrimination under these stat-  
5 utes have a private right of action in the Federal  
6 courts, and that this is necessary for effective pro-  
7 tection of the law, although Congress did not make  
8 such a right of action explicit in the statute involved.  
9 Cannon v. University of Chicago, 441 U.S. 677  
10 (1979).

11 (5) Furthermore, for effective enforcement of  
12 the statutes cited in this section, it is necessary that  
13 the private right of action include a means to chal-  
14 lenge all forms of discrimination that are prohibited  
15 by the statutes, including practices that have a dis-  
16 parate impact and are not justified as necessary to  
17 achieve the legitimate goals of programs or activities  
18 supported by Federal financial assistance.

19 (6) By reinstating a private right of action to  
20 challenge disparate impact discrimination under title  
21 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d  
22 et seq.) and confirming that right for other civil  
23 rights statutes, Congress is not acting in a manner  
24 that would expose covered entities to unfair findings  
25 of discrimination. The legal standard for a disparate

1 impact claim has never been structured so that a  
2 finding of discrimination could be based on numer-  
3 ical imbalance alone.

4 (7) In contrast, a failure to reinstate or confirm  
5 a private right of action would leave vindication of  
6 the rights to equality of opportunity solely to Fed-  
7 eral agencies. Action by Congress to specify a pri-  
8 vate right of action is necessary to ensure that per-  
9 sons will have a remedy if they are denied equal ac-  
10 cess to education, housing, health, environmental  
11 protection, transportation, and many other programs  
12 and services by practices of covered entities that re-  
13 sult in discrimination.

14 (8) As a result of the Supreme Court's decision  
15 in *Sandoval*, courts have dismissed numerous claims  
16 brought under the regulations promulgated pursuant  
17 to title VI of the Civil Rights Act of 1964 (42  
18 U.S.C. 2000d et seq.) that challenged actions with  
19 an unjustified discriminatory effect. Although the  
20 *Sandoval* Court did not address title IX of the Edu-  
21 cation Amendments of 1972 (20 U.S.C. 1681 et  
22 seq.), lower courts have similarly dismissed claims  
23 under such title.

24 (9) Section 504 of the Rehabilitation Act of  
25 1973 (29 U.S.C. 794) has received different treat-

1       ment by the Supreme Court. In *Alexander v. Choate*,  
2       469 U.S. 287 (1985), the Court proceeded on the  
3       assumption that the statute itself prohibited some  
4       actions that had a disparate impact on disabled indi-  
5       viduals—an assumption borne out by congressional  
6       statements made during passage of the Act. In  
7       *Sandoval*, the Court appeared to accept this prin-  
8       ciple of *Alexander*. Moreover, the Supreme Court ex-  
9       plicitly recognized congressional approval of the reg-  
10      ulations promulgated to implement section 504 of  
11      the Rehabilitation Act of 1973 in *Consolidated Rail*  
12      *Corp. v. Darrone*, 465 U.S. 624, 634 (1984). Rely-  
13      ing on the validity of the regulations, Congress in-  
14      corporated the regulations into the statutory require-  
15      ments of section 204 of the Americans with Disabil-  
16      ities Act of 1990 (42 U.S.C. 12134). Nonetheless,  
17      *Sandoval* creates the potential for uncertainty in the  
18      application of critical protections of Section 504,  
19      particularly in the lower courts.

20           (10) The right to maintain a private right of  
21      action under a provision added to a statute under  
22      this Act will be effectuated by a waiver of sovereign  
23      immunity in the same manner as sovereign immu-  
24      nity is waived under the remaining provisions of that  
25      statute.

1           (11) Numerous provisions of Federal law ex-  
2           pressly prohibit discrimination on the basis of sex,  
3           and Federal agencies and courts have correctly in-  
4           terpreted these prohibitions on sex discrimination to  
5           include discrimination based on sexual orientation,  
6           gender identity, and sex stereotypes. In particular,  
7           the Equal Employment Opportunity Commission  
8           correctly interpreted title VII of the Civil Rights Act  
9           of 1964 in *Macy v. Holder*, *Baldwin v. Foxx*, and  
10          *Lusardi v. McHugh*.

11          (12) In forbidding discrimination based on sex,  
12          Congress intended to strike at the entire spectrum  
13          of disparate treatment resulting from sex-related  
14          characteristics. The Supreme Court correctly recog-  
15          nized in *Price Waterhouse v. Hopkins* and *Oncale v.*  
16          *Sundowner Offshore Services* that among these char-  
17          acteristics are sex-stereotypes, including masculinity  
18          and femininity. Congress reaffirmed in the Preg-  
19          nancy Discrimination Act of 1978 that discrimina-  
20          tion on the basis of “sex” includes but is not limited  
21          to discrimination on the basis of “pregnancy, child-  
22          birth, or related medical conditions.”

23          (13) The absence of explicit prohibitions of dis-  
24          crimination on the basis of sexual orientation and  
25          gender identity under Federal statutory law has cre-

1       ated uncertainty for employers and other entities  
2       covered by Federal nondiscrimination laws and  
3       caused unnecessary hardships for LGBTQ individ-  
4       uals.

5           (14) The Supreme Court correctly recognized in  
6       Hobby Lobby v. Burwell that the Religious Freedom  
7       Restoration Act of 1993 (RFRA) “provides no . . .  
8       shield” to those who “cloak” discrimination as “reli-  
9       gious practice to escape legal sanction.” This Act re-  
10      affirms that crucial limitation on RFRA, that Con-  
11      gress did not intend for it to be used—and indeed  
12      it cannot be used—to provide a defense against alle-  
13      gations of discrimination on the basis of any pro-  
14      tected trait.

15           (15) Chapter 1 of title 9, United States Code  
16      (commonly known as the “Federal Arbitration  
17      Act”), represented an exercise of legislative power  
18      that required courts to recognize private voluntary  
19      agreements to arbitrate commercial disputes at a  
20      time when the courts were refusing to do so on  
21      grounds that arbitration represented a usurpation of  
22      the authority of the courts to resolve legal disputes.

23           (16) The Federal Arbitration Act did not, and  
24      should not have been interpreted to, supplant or nul-  
25      lify the legislatively created rights and remedies that



1 Congress, exercising its power under article I of the  
2 Constitution of the United States, has granted to  
3 the people of the United States for resolving dis-  
4 putes in State and Federal courts.

5 (17) Recent court decisions, including AT&T  
6 Mobility LLC v. Concepcion, 563 U.S. 333 (2011)  
7 and American Express Co. v. Italian Colors Res-  
8 taurant, 133 S. Ct. 2304 (2013), have interpreted  
9 the Federal Arbitration Act to broadly preempt  
10 rights and remedies established under substantive  
11 State and Federal law. As a result, these decisions  
12 have enabled business entities to avoid or nullify  
13 legal duties created by congressional enactment, re-  
14 sulting in millions of people in the United States  
15 being unable to vindicate their rights in State and  
16 Federal courts.

17 (18) States have a compelling interest in enact-  
18 ing rights and remedies to protect the welfare of  
19 their citizens, and the Federal Arbitration Act  
20 should not be, and should not have been, interpreted  
21 to preempt State legislation that enacted rights and  
22 remedies to protect the welfare of their citizens.

23 (19) The Supreme Court misinterpreted Title  
24 VII of the Civil Rights Act in establishing the  
25 Faragher-Ellerth affirmative defense in Faragher v.

1 City of Boca Raton and Burlington Industries, Inc.  
2 v. Ellerth. This affirmative defense often leaves vic-  
3 tims of sexual harassment with no remedy or re-  
4 course after incidence of sexual or other harassment.  
5 Violations of the law, and injuries to a victim and  
6 their rights, are not cured by the existence of an  
7 anti-harassment policy or the lack of future harm,  
8 and in a hostile work environment taking preventa-  
9 tive measures is not a requirement that falls on the  
10 victim.

11 (20) Bringing a lawsuit to vindicate civil rights  
12 is financially risky, and law firms, whether large or  
13 small, are unlikely to take such cases on. Congress  
14 enacted the Civil Rights Attorney’s Fees Award Act  
15 of 1976 in order to make lawsuits to vindicate civil  
16 rights more accessible to potential plaintiffs. The  
17 Supreme Court correctly recognized in *City of River-*  
18 *side v. Rivera* that the effectuation of congressional  
19 intent requires viable civil rights lawsuits, which are  
20 dependent on the availability of private enforcement  
21 mechanisms and the corresponding availability of at-  
22 torney’s fees.

23 (21) However, the Supreme Court incorrectly  
24 held that the “catalyst theory” is not a permissible  
25 basis for the award of attorney’s fees in *Buckhannon*

1 v. West Virginia Department of Health & Human  
2 Resources. In doing so, the Court deprived plaintiffs  
3 who effectively win a lawsuit through a settlement,  
4 from receiving pre-trial attorney’s fees. Congress en-  
5 acted fee-shifting provisions in civil rights laws to  
6 encourage private enforcement of those laws, and  
7 fees must be awarded when a lawsuit vindicates the  
8 rights Congress sought to secure. In disapproving of  
9 the “catalyst theory” the Court incentivized poten-  
10 tial defendants to draw out the pre-trial process and  
11 settle at the last second, making the lawsuit too ex-  
12 pensive for the average victim to undertake and too  
13 risky for the average attorney to accept a civil rights  
14 case.

15 (22) The Civil Rights Act of 1964, and other  
16 civil rights laws that followed it, were written, in  
17 part, to banish rampant disparate treatment on the  
18 basis of race from American society. Congress  
19 sought to overcome the pervasive, racist ideology  
20 that Black traits were inferior by prohibiting dis-  
21 crimination, and intended the Act to be interpreted  
22 broadly—encompassing race and all its attributes,  
23 especially those traits historically associated with  
24 race.

1           (23) “Blackness” and its associated physical  
2           traits, such as dark skin and kinky and curly hair,  
3           have too often been equated with inferiority and  
4           “unprofessionalism”. Professionalism was, and still  
5           is, closely linked to European features and manner-  
6           isms, which entails that those who do not naturally  
7           fall into Eurocentric norms must alter their appear-  
8           ances, sometimes drastically and permanently, in  
9           order to be deemed professional. Such norms are, on  
10          their face, proxies for race.

11          (24) Federal courts have correctly interpreted,  
12          e.g. that Title VII of the Civil Rights Act of 1964  
13          prohibits discrimination on the basis of race, and  
14          thus protect individuals from discrimination against  
15          afros. However, the courts have yet to accept that  
16          the Act outlaws dress codes and grooming policies  
17          that prohibit any natural presentation of Black hair,  
18          including afros, braids, twists, and locks. Although  
19          purportedly “race-neutral”, these policies have a dis-  
20          parate impact on Black individuals as they are more  
21          likely to deter, burden, or punish Black individuals  
22          than any other group. Therefore, hair discrimination  
23          targeting hairstyles associated with race is racial dis-  
24          crimination.

1 **SEC. 3. PROHIBITED DISCRIMINATION.**

2 (a) CIVIL RIGHTS ACT OF 1964.—Section 601 of the  
3 Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended—

4 (1) by striking “No” and inserting “(a) No”;

5 (2) by inserting “religion, sex (as such term is  
6 defined in section 208),” before “or national origin”;

7 and

8 (3) by adding at the end the following:

9 “(b)(1)(A) Discrimination (including exclusion from  
10 participation and denial of benefits) based on disparate  
11 impact is established under this title only if—

12 “(i) a person aggrieved by discrimination on the  
13 basis of race, color, sex (as defined in section 208),  
14 or national origin (referred to in this title as a ‘per-  
15 son aggrieved’) demonstrates that an entity subject  
16 to this title (referred to in this title as a ‘covered en-  
17 tity’) has a policy or practice that causes a disparate  
18 impact on the basis of race, color, sex (as such term  
19 is defined in section 208), or national origin and the  
20 covered entity fails to demonstrate that the chal-  
21 lenged policy or practice is related to and necessary  
22 to achieve the nondiscriminatory goals of the pro-  
23 gram or activity alleged to have been operated in a  
24 discriminatory manner; or

25 “(ii) the person aggrieved demonstrates (con-  
26 sistent with the demonstration required under title

1 VII with respect to an ‘alternative employment prac-  
2 tice’) that a less discriminatory alternative policy or  
3 practice exists, and the covered entity refuses to  
4 adopt such alternative policy or practice.

5 “(B)(i) With respect to demonstrating that a par-  
6 ticular policy or practice causes a disparate impact as de-  
7 scribed in subparagraph (A)(i), the person aggrieved shall  
8 demonstrate that each particular challenged policy or  
9 practice causes a disparate impact, except that if the per-  
10 son aggrieved demonstrates to the court that the elements  
11 of a covered entity’s decisionmaking process are not capa-  
12 ble of separation for analysis, the decisionmaking process  
13 may be analyzed as 1 policy or practice.

14 “(ii) If the covered entity demonstrates that a specific  
15 policy or practice does not cause the disparate impact, the  
16 covered entity shall not be required to demonstrate that  
17 such policy or practice is necessary to achieve the goals  
18 of its program or activity.

19 “(2) A demonstration that a policy or practice is nec-  
20 essary to achieve the goals of a program or activity may  
21 not be used as a defense against a claim of intentional  
22 discrimination under this title.

23 “(3) In this subsection, the term ‘demonstrates’  
24 means meets the burdens of production and persuasion.”.

1 (b) EDUCATION AMENDMENTS OF 1972.—Section  
2 901 of the Education Amendments of 1972 (20 U.S.C.  
3 1681) is amended—

4 (1) by redesignating subsection (c) as sub-  
5 section (e); and

6 (2) by inserting after subsection (b) the fol-  
7 lowing:

8 “(c)(1)(A) Subject to the conditions described in  
9 paragraphs (1) through (9) of subsection (a), discrimina-  
10 tion (including exclusion from participation and denial of  
11 benefits) based on disparate impact is established under  
12 this title only if—

13 “(i) a person aggrieved by discrimination on the  
14 basis of sex (as such term is defined in section 208  
15 of the Civil Rights Act of 1964) (referred to in this  
16 title as a ‘person aggrieved’) demonstrates that an  
17 entity subject to this title (referred to in this title as  
18 a ‘covered entity’) has a policy or practice that  
19 causes a disparate impact on the basis of sex and  
20 the covered entity fails to demonstrate that the chal-  
21 lenged policy or practice is related to and necessary  
22 to achieve the nondiscriminatory goals of the pro-  
23 gram or activity alleged to have been operated in a  
24 discriminatory manner; or

1           “(ii) the person aggrieved demonstrates (con-  
2           sistent with the demonstration required under title  
3           VII of the Civil Rights Act of 1964 (42 U.S.C.  
4           2000e et seq.) with respect to an ‘alternative em-  
5           ployment practice’) that a less discriminatory alter-  
6           native policy or practice exists, and the covered enti-  
7           ty refuses to adopt such alternative policy or prac-  
8           tice.

9           “(B)(i) With respect to demonstrating that a par-  
10          ticular policy or practice causes a disparate impact as de-  
11          scribed in subparagraph (A)(i), the person aggrieved shall  
12          demonstrate that each particular challenged policy or  
13          practice causes a disparate impact, except that if the per-  
14          son aggrieved demonstrates to the court that the elements  
15          of a covered entity’s decisionmaking process are not capa-  
16          ble of separation for analysis, the decisionmaking process  
17          may be analyzed as 1 policy or practice.

18          “(ii) If the covered entity demonstrates that a specific  
19          policy or practice does not cause the disparate impact, the  
20          covered entity shall not be required to demonstrate that  
21          such policy or practice is necessary to achieve the goals  
22          of its program or activity.

23          “(2) A demonstration that a policy or practice is nec-  
24          essary to achieve the goals of a program or activity may



1 not be used as a defense against a claim of intentional  
2 discrimination under this title.

3 “(3) In this subsection, the term ‘demonstrates’  
4 means meets the burdens of production and persuasion.”.

5 (c) AGE DISCRIMINATION ACT OF 1975.—Section  
6 303 of the Age Discrimination Act of 1975 (42 U.S.C.  
7 6102) is amended—

8 (1) by striking “Pursuant” and inserting “(a)  
9 Pursuant”; and

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

11 “(b)(1)(A) Subject to the conditions described in sub-  
12 sections (b) and (c) of section 304, discrimination (includ-  
13 ing exclusion from participation and denial of benefits)  
14 based on disparate impact is established under this title  
15 only if—

16 “(i) a person aggrieved by discrimination on the  
17 basis of age (referred to in this title as a ‘person ag-  
18 grieved’) demonstrates that an entity subject to this  
19 title (referred to in this title as a ‘covered entity’)  
20 has a policy or practice that causes a disparate im-  
21 pact on the basis of age and the covered entity fails  
22 to demonstrate that the challenged policy or practice  
23 is related to and necessary to achieve the non-  
24 discriminatory goals of the program or activity al-

1       leged to have been operated in a discriminatory  
2       manner; or

3               “(ii) the person aggrieved demonstrates (con-  
4       sistent with the demonstration required under title  
5       VII of the Civil Rights Act of 1964 (42 U.S.C.  
6       2000e et seq.) with respect to an ‘alternative em-  
7       ployment practice’) that a less discriminatory alter-  
8       native policy or practice exists, and the covered enti-  
9       ty refuses to adopt such alternative policy or prac-  
10      tice.

11       “(B)(i) With respect to demonstrating that a par-  
12      ticular policy or practice causes a disparate impact as de-  
13      scribed in subparagraph (A)(i), the person aggrieved shall  
14      demonstrate that each particular challenged policy or  
15      practice causes a disparate impact, except that if the per-  
16      son aggrieved demonstrates to the court that the elements  
17      of a covered entity’s decisionmaking process are not capa-  
18      ble of separation for analysis, the decisionmaking process  
19      may be analyzed as 1 policy or practice.

20       “(ii) If the covered entity demonstrates that a specific  
21      policy or practice does not cause the disparate impact, the  
22      covered entity shall not be required to demonstrate that  
23      such policy or practice is necessary to achieve the goals  
24      of its program or activity.

1       “(2) A demonstration that a policy or practice is nec-  
2       essary to achieve the goals of a program or activity may  
3       not be used as a defense against a claim of intentional  
4       discrimination under this title.

5       “(3) In this subsection, the term ‘demonstrates’  
6       means meets the burdens of production and persuasion.”.

7       (d) FAIR HOUSING ACT.—The Fair Housing Act  
8       (title VIII of the Civil Rights Act of 1968; 42 U.S.C. 3601  
9       et seq.) is amended—

10           (1) in section 802, by adding at the end the fol-  
11       lowing:

12           “(p) ‘Sex’ has the meaning given such term in section  
13       208 of the Civil Rights Act of 1964.

14           “(q) ‘Source of income’ includes—

15               “(1) any income from a profession, occupation,  
16       or job;

17               “(2) any form of Federal, State, or local hous-  
18       ing assistance provided to a family or provided to a  
19       housing owner on behalf of a family, or private as-  
20       sistance, grant, loan or rental assistance program,  
21       including low-income housing assistance certificates,  
22       rental subsidies from nongovernmental organiza-  
23       tions, and vouchers issued under the United States  
24       Housing Act of 1937 (42 U.S.C. 1437 et seq.);

1           “(3) any income received during a taxable year  
2           as Social Security benefits, as defined in section  
3           86(d) of the Internal Revenue Code of 1986, or as  
4           supplemental security income benefits under title  
5           XVI of the Social Security Act (42 U.S.C. 1381 et  
6           seq.);

7           “(4) any gift, inheritance, pension, annuity, or  
8           other consideration or benefit;

9           “(5) any income received pursuant to court  
10          order, including spousal support and child support;

11          “(6) any payment from a trust, guardian, or  
12          conservator;

13          “(7) any income from the sale or pledge of  
14          property or an interest in property; and

15          “(8) any other lawful source of income.

16          “(r) ‘Race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-  
17          tion’, ‘gender identity’, ‘handicap’, ‘familial status’,  
18          ‘source of income’, or ‘national origin’, used with respect  
19          to an individual, includes—

20                 “(1) the race, color, religion, sex, sexual ori-  
21                 entation, gender identity, handicap, familial status,  
22                 source of income, or national origin, respectively, of  
23                 another person with whom the individual is associ-  
24                 ated or has been associated; and

1           “(2) a perception or belief, even if inaccurate,  
2           concerning the race, color, religion, sex, sexual ori-  
3           entation, gender identity, handicap, familial status,  
4           source of income, or national origin, respectively, of  
5           the individual.”;

6           (2) in section 804, by inserting “(as defined in  
7           section 208 of the Civil Rights Act of 1964), source  
8           of income,” after “sex” each place that term ap-  
9           pears;

10          (3) in section 805, by inserting “(as defined in  
11          section 208 of the Civil Rights Act of 1964), source  
12          of income,” after “sex” each place that term ap-  
13          pears;

14          (4) in section 806, by inserting “(as defined in  
15          section 208 of the Civil Rights Act of 1964), source  
16          of income,” after “sex”;

17          (5) in section 807 (42 U.S.C. 3607), by adding  
18          at the end the following:

19          “(c) Nothing in this title shall be construed to—

20                 “(1) prohibit an entity from providing housing  
21                 assistance under section 8(o)(19) of the United  
22                 States Housing Act of 1937 (42 U.S.C.  
23                 1437f(o)(19)) in a nondiscriminatory manner; or

24                 “(2) limit the ability of the owner of a dwelling  
25                 to determine, in a commercially reasonable and non-

1 discriminatory manner, the ability of a person to af-  
2 ford to purchase or rent the dwelling.”; and

3 (6) in section 808(e)(6) (42 U.S.C. 3608(e)(6)),  
4 by inserting “source of income,” after “handicap,”.

5 (e) PREVENTION OF INTIMIDATION IN FAIR HOUS-  
6 ING CASES.—Section 901 of the Civil Rights Act of 1968  
7 (42 U.S.C. 3631) is amended by inserting “(as such term  
8 is defined in section 208 of the Civil Rights Act of 1964),  
9 source of income (as defined in section 802),” after “sex”  
10 each place that term appears.

11 **SEC. 4. RIGHT OF RECOVERY.**

12 (a) CIVIL RIGHTS ACT OF 1964.—Title VI of the  
13 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) is  
14 amended by inserting after section 602 the following:

15 **“SEC. 602A. ACTIONS BROUGHT BY PERSONS AGGRIEVED.**

16 “(a) CLAIMS BASED ON PROOF OF INTENTIONAL  
17 DISCRIMINATION.—In an action brought by a person ag-  
18 grieved under this title against a covered entity who has  
19 engaged in unlawful intentional discrimination (not a  
20 practice that is unlawful because of its disparate impact)  
21 prohibited under this title (including its implementing reg-  
22 ulations), the person aggrieved may recover equitable and  
23 legal relief (including compensatory and punitive dam-  
24 ages), attorney’s fees (including expert fees), and costs,

1 except that punitive damages are not available against a  
2 government, government agency, or political subdivision.

3 “(b) CLAIMS BASED ON THE DISPARATE IMPACT  
4 STANDARD OF PROOF.—In an action brought by a person  
5 aggrieved under this title against a covered entity who has  
6 engaged in unlawful discrimination based on disparate im-  
7 pact prohibited under this title (including its implementing  
8 regulations), the person aggrieved may recover equitable  
9 and legal relief (including compensatory and punitive dam-  
10 ages), attorney’s fees (including expert fees), and costs,  
11 except that punitive damages are not available against a  
12 government, government agency, or political subdivision.

13 “(c) SETTLEMENT.—In any settlement agreement or  
14 consent decree to resolve an action brought or which may  
15 be brought under this title, attorney’s fees of the plaintiff  
16 shall be included.”

17 (b) EDUCATION AMENDMENTS OF 1972.—Title IX of  
18 the Education Amendments of 1972 (20 U.S.C. 1681 et  
19 seq.) is amended by inserting after section 902 the fol-  
20 lowing:

21 **“SEC. 902A. ACTIONS BROUGHT BY PERSONS AGGRIEVED.**

22 “(a) CLAIMS BASED ON PROOF OF INTENTIONAL  
23 DISCRIMINATION.—In an action brought by a person ag-  
24 grieved under this title against a covered entity who has  
25 engaged in unlawful intentional discrimination (not a

1 practice that is unlawful because of its disparate impact)  
2 prohibited under this title (including its implementing reg-  
3 ulations), the person aggrieved may recover equitable and  
4 legal relief (including compensatory and punitive dam-  
5 ages), attorney’s fees (including expert fees), and costs,  
6 except that punitive damages are not available against a  
7 government, government agency, or political subdivision.

8 “(b) CLAIMS BASED ON THE DISPARATE IMPACT  
9 STANDARD OF PROOF.—In an action brought by a person  
10 aggrieved under this title against a covered entity who has  
11 engaged in unlawful discrimination based on disparate im-  
12 pact prohibited under this title (including its implementing  
13 regulations), the person aggrieved may recover equitable  
14 and legal relief (including compensatory and punitive dam-  
15 ages), attorney’s fees (including expert fees), and costs,  
16 except that punitive damages are not available against a  
17 government, government agency, or political subdivision.

18 “(c) SETTLEMENT.—In any settlement agreement or  
19 consent decree to resolve an action brought or which may  
20 be brought under this title, attorney’s fees of the plaintiff  
21 shall be included.”.

22 (c) AGE DISCRIMINATION ACT OF 1975.—

23 (1) IN GENERAL.—Section 305 of the Age Dis-  
24 crimination Act of 1975 (42 U.S.C. 6104) is amend-  
25 ed by adding at the end the following:



1       “(g)(1) In an action brought by a person aggrieved  
2 under this title against a covered entity who has engaged  
3 in unlawful intentional discrimination (not a practice that  
4 is unlawful because of its disparate impact) prohibited  
5 under this title (including its implementing regulations),  
6 the person aggrieved may recover equitable and legal relief  
7 (including compensatory and punitive damages), attor-  
8 ney’s fees (including expert fees), and costs, except that  
9 punitive damages are not available against a government,  
10 government agency, or political subdivision.

11       “(2) In an action brought by a person aggrieved  
12 under this title against a covered entity who has engaged  
13 in unlawful discrimination based on disparate impact pro-  
14 hibited under this title (including its implementing regula-  
15 tions), the person aggrieved may recover equitable and  
16 legal relief (including compensatory and punitive dam-  
17 ages), attorney’s fees (including expert fees), and costs,  
18 except that punitive damages are not available against a  
19 government, government agency, or political subdivision.

20       “(3) In any settlement agreement or consent decree  
21 to resolve an action brought or which may be brought  
22 under this title, attorney’s fees of the plaintiff shall be  
23 included.”.

24               (2) CONFORMITY OF ADA WITH TITLE VI AND  
25       TITLE IX.—

1 (A) ELIMINATING WAIVER OF RIGHT TO  
2 FEES IF NOT REQUESTED IN COMPLAINT.—Sec-  
3 tion 305(e)(1) of the Age Discrimination Act of  
4 1975 (42 U.S.C. 6104(e)) is amended—

5 (i) by striking “to enjoin a violation”  
6 and inserting “to redress a violation”; and

7 (ii) by striking the second sentence  
8 and inserting the following: “The Court  
9 shall award the costs of suit, including a  
10 reasonable attorney’s fee (including expert  
11 fees), to the prevailing plaintiff.”.

12 (B) ELIMINATING UNNECESSARY MAN-  
13 DATES: TO EXHAUST ADMINISTRATIVE REM-  
14 EDIES; AND TO DELAY SUIT LONGER THAN 180  
15 DAYS TO OBTAIN AGENCY REVIEW.—Section  
16 305(f) of the Age Discrimination Act of 1975  
17 (42 U.S.C. 6104(f)) is amended by striking  
18 “With respect to actions brought for relief  
19 based on an alleged violation of the provisions  
20 of this title,” and inserting “Actions brought  
21 for relief based on an alleged violation of the  
22 provisions of this title may be initiated in a  
23 court of competent jurisdiction, pursuant to  
24 section 305(e), or before the relevant Federal  
25 department or agency. With respect to such ac-

1 tions brought initially before the relevant Fed-  
2 eral department or agency,”.

3 (C) ELIMINATING DUPLICATIVE “REASON-  
4 ABLENESS” REQUIREMENT; CLARIFYING THAT  
5 “REASONABLE FACTORS OTHER THAN AGE” IS  
6 DEFENSE TO A DISPARATE IMPACT CLAIM, NOT  
7 AN EXCEPTION TO ADA COVERAGE.—Section  
8 304(b)(1) of the Age Discrimination Act of  
9 1975 (42 U.S.C. 6103(b)(1)) is amended by  
10 striking “involved—” and all that follows  
11 through the period and inserting “involved such  
12 action reasonably takes into account age as a  
13 factor necessary to the normal operation or the  
14 achievement of any statutory objective of such  
15 program or activity.”.

16 (d) REHABILITATION ACT OF 1973.—Section 504 of  
17 the Rehabilitation Act of 1973 (29 U.S.C. 794) is amend-  
18 ed by adding at the end the following:

19 “(e)(1) In an action brought by a person aggrieved  
20 by discrimination on the basis of disability (referred to in  
21 this section as a ‘person aggrieved’) under this section  
22 against an entity subject to this section (referred to in  
23 this section as a ‘covered entity’) who has engaged in un-  
24 lawful intentional discrimination (not a practice that is  
25 unlawful because of its disparate impact) prohibited under

1 this section (including its implementing regulations), the  
2 person aggrieved may recover equitable and legal relief  
3 (including compensatory and punitive damages), attor-  
4 ney’s fees (including expert fees), and costs, except that  
5 punitive damages are not available against a government,  
6 government agency, or political subdivision.

7 “(2) In an action brought by a person aggrieved  
8 under this section against a covered entity who has en-  
9 gaged in unlawful discrimination based on disparate im-  
10 pact prohibited under this section (including its imple-  
11 menting regulations), the person aggrieved may recover  
12 equitable and legal relief (including compensatory and pu-  
13 nitive damages), attorney’s fees (including expert fees),  
14 and costs, except that punitive damages are not available  
15 against a government, government agency, or political  
16 subdivision.

17 “(3) Equitable and legal relief (including compen-  
18 satory and punitive damages), attorney’s fees (including  
19 expert fees), and costs shall be available in all cases  
20 brought for the failure to provide reasonable accommoda-  
21 tions or reasonable modifications, or the failure to comply  
22 with requirements of effective communication, accessible  
23 design, maintenance of accessible features, or program ac-  
24 cessibility.

1       “(4) In any settlement agreement or consent decree  
2 to resolve an action brought or which may be brought  
3 under this section, attorney’s fees of the plaintiff shall be  
4 included.”.

5       (e) FAIR HOUSING ACT.—The Fair Housing Act  
6 (title VIII of the Civil Rights Act of 1968; 42 U.S.C. 3601  
7 et seq.), as amended by this Act, is further amended by  
8 adding at the end the following:

9       **“SEC. 823. DISPARATE IMPACT.**

10       “(a) IN GENERAL.—

11               “(1) ESTABLISHMENT.—Discrimination (includ-  
12 ing exclusion from participation and denial of bene-  
13 fits) based on disparate impact is established under  
14 this title only if—

15                       “(A) a person aggrieved by discrimination  
16 on the basis of race, color, sex, or national ori-  
17 gin demonstrates that an entity subject to this  
18 title (referred to in this title as a ‘covered enti-  
19 ty’) has a policy or practice that causes a dis-  
20 parate impact on the basis of race, color, sex,  
21 or national origin and the covered entity fails to  
22 demonstrate that the challenged policy or prac-  
23 tice is related to and necessary to achieve the  
24 nondiscriminatory goals of the program or ac-

1           tivity alleged to have been operated in a dis-  
2           crimatory manner; or

3           “(B) the person aggrieved demonstrates  
4           that a less discriminatory alternative policy or  
5           practice exists, and the covered entity refuses to  
6           adopt such alternative policy or practice.

7           “(2) DEMONSTRATION.—

8           “(A) CAUSATION.—With respect to dem-  
9           onstrating that a particular policy or practice  
10          causes a disparate impact as described in sub-  
11          section (a)(1), the person aggrieved shall dem-  
12          onstrate that each particular challenged policy  
13          or practice causes a disparate impact, except  
14          that if the person aggrieved demonstrates to the  
15          court that the elements of a covered entity’s de-  
16          cisionmaking process are not capable of separa-  
17          tion for analysis, the decisionmaking process  
18          may be analyzed as 1 policy or practice.

19          “(B) NO REQUIREMENT TO DEM-  
20          ONSTRATE.—If the covered entity demonstrates  
21          that a specific policy or practice does not cause  
22          the disparate impact, the covered entity shall  
23          not be required to demonstrate that such policy  
24          or practice is necessary to achieve the goals of  
25          its program or activity.

1           “(b) NECESSITY OF INTENTIONAL DISCRIMINATION  
2 TO ACHIEVE POLICY GOALS NOT A DEFENSE.—A dem-  
3 onstration that a policy or practice is necessary to achieve  
4 the goals of a program or activity may not be used as  
5 a defense against a claim of intentional discrimination  
6 under this title.

7           “(c) DEFINITION.—In this section, the term ‘dem-  
8 onstrates’ means meets the burdens of production and per-  
9 suasion.

10 **“SEC. 824. RELIEF FOR CLAIMS BASED ON DIFFERING**  
11 **STANDARDS OF PROOF.**

12           “(a) CLAIMS BASED ON PROOF OF INTENTIONAL  
13 DISCRIMINATION.—In an action brought by a person ag-  
14 grieved under this title against a covered entity who has  
15 engaged in unlawful intentional discrimination (not a  
16 practice that is unlawful because of its disparate impact)  
17 prohibited under this title (including its implementing reg-  
18 ulations), the person aggrieved may recover equitable and  
19 legal relief (including compensatory and punitive dam-  
20 ages), attorney’s fees (including expert fees), and costs,  
21 except that punitive damages are not available against a  
22 government, government agency, or political subdivision.

23           “(b) CLAIMS BASED ON THE DISPARATE IMPACT  
24 STANDARD OF PROOF.—In an action brought by a person  
25 aggrieved under this title against a covered entity who has

1 engaged in unlawful discrimination based on disparate im-  
2 pact prohibited under this title (including its implementing  
3 regulations), the person aggrieved may recover equitable  
4 and legal relief (including compensatory and punitive dam-  
5 ages), attorney’s fees (including expert fees), and costs,  
6 except that punitive damages are not available against a  
7 government, government agency, or political subdivision.

8 “(c) RELIEF AVAILABLE.—Equitable and legal relief  
9 (including compensatory and punitive damages), attor-  
10 ney’s fees (including expert fees), and costs shall be avail-  
11 able in all cases brought for the failure to permit reason-  
12 able accommodations, make reasonable modifications, or  
13 design and construct accessible dwellings as required by  
14 section 804(f)(3)(C).

15 “(d) SETTLEMENT.—In any settlement agreement or  
16 consent decree to resolve an action brought or which may  
17 be brought under this title, attorney’s fees of the plaintiff  
18 shall be included.”

19 **SEC. 5. PROHIBITION ON DISCRIMINATION BY LAW EN-**  
20 **FORCEMENT.**

21 (a) DEFINITIONS.—In this section—

22 (1) The term “governmental body” means any  
23 department, agency, special purpose district, or  
24 other instrumentality of Federal, State, local, or In-  
25 dian tribal government.



1           (2) The term “Indian tribe” has the meaning  
2 given the term in section 102 of the Federally Rec-  
3 ognized Indian Tribe List Act of 1994 (25 U.S.C.  
4 479a).

5           (3) The term “law enforcement agency” means  
6 any Federal, State, local, or Indian tribal govern-  
7 mental body engaged in the prevention, detection, or  
8 investigation of violations of criminal, immigration,  
9 or customs laws.

10          (4) The term “law enforcement agent” means  
11 any Federal, State, local, or Indian tribal official re-  
12 sponsible for enforcing criminal, immigration, or  
13 customs laws, including police officers and other  
14 agents of a law enforcement agency.

15          (5) The term “profiling” means the practice of  
16 a law enforcement agent or agency relying, to any  
17 degree, on actual or perceived race, ethnicity, na-  
18 tional origin, religion, sex (as defined in section 208  
19 of the Civil Rights Act of 1964), gender identity, or  
20 sexual orientation in selecting which individual to  
21 subject to routine or spontaneous investigatory ac-  
22 tivities or in deciding upon the scope and substance  
23 of law enforcement activity following any initial in-  
24 vestigatory procedure, except when there is trust-  
25 worthy information, relevant to the locality and

1       timeframe, that links a person with a particular  
2       characteristic described in this paragraph to an  
3       identified criminal incident or scheme.

4               (6) The term “routine or spontaneous investiga-  
5       tory activities” means the following activities by a  
6       law enforcement agent:

7                       (A) Interviews.

8                       (B) Traffic stops.

9                       (C) Pedestrian stops.

10                      (D) Frisks and other types of body  
11       searches.

12                      (E) Consensual or nonconsensual searches  
13       of the persons, property, or possessions (includ-  
14       ing vehicles) of individuals using any form of  
15       public or private transportation, including mo-  
16       torists and pedestrians.

17                      (F) Data collection, analysis, assessments,  
18       and predicated investigations.

19                      (G) Inspections and interviews of entrants  
20       into the United States that are more extensive  
21       than those customarily carried out.

22                      (H) Immigration-related workplace inves-  
23       tigations.

24                      (I) Such other types of law enforcement  
25       encounters compiled for or by the Federal Bu-

1           reau of Investigation or the Department of Jus-  
2           tice Bureau of Justice Statistics.

3           (7) The term “State” means each of the 50  
4           States, the District of Columbia, the Commonwealth  
5           of Puerto Rico, and any other territory or possession  
6           of the United States.

7           (8) The term “unit of local government”  
8           means—

9                   (A) any city, county, township, town, bor-  
10                  ough, parish, village, or other general purpose  
11                  political subdivision of a State;

12                  (B) any law enforcement district or judicial  
13                  enforcement district that—

14                          (i) is established under applicable  
15                          State law; and

16                          (ii) has the authority to, in a manner  
17                          independent of other State entities, estab-  
18                          lish a budget and impose taxes; or

19                  (C) any Indian tribe that performs law en-  
20                  forcement functions, as determined by the Sec-  
21                  retary of the Interior.

22           (b) PROHIBITION OF PROFILING.—

23                   (1) IN GENERAL.—No law enforcement agent  
24                   or law enforcement agency shall engage in profiling.

25                   (2) ENFORCEMENT.—

1 (A) REMEDY.—The United States, or an  
2 individual injured by profiling, may enforce this  
3 title in a civil action for equitable or legal relief,  
4 filed in a State court of general jurisdiction or  
5 in a district court of the United States.

6 (B) PARTIES.—In any action brought  
7 under this title, relief may be obtained  
8 against—

9 (i) any governmental body that em-  
10 ployed any law enforcement agent who en-  
11 gaged in profiling;

12 (ii) any agent of such body who en-  
13 gaged in profiling; and

14 (iii) any person with supervisory au-  
15 thority over such agent.

16 (C) NATURE OF PROOF.—Proof that the  
17 routine or spontaneous investigatory activities  
18 of law enforcement agents in a jurisdiction have  
19 had a disparate impact on individuals with a  
20 particular characteristic described in subsection  
21 (a)(5) shall constitute prima facie evidence of a  
22 violation of this section.

23 (D) ATTORNEY'S FEES.—In any action or  
24 proceeding to enforce this section against any  
25 governmental body, the court may allow a pre-

1 vailing plaintiff, other than the United States,  
2 reasonable attorney’s fees as part of the costs,  
3 and may include expert fees as part of the at-  
4 torney’s fees.

5 **SEC. 6. PUBLIC ACCOMMODATIONS.**

6 (a) PROHIBITION ON DISCRIMINATION OR SEGREGA-  
7 TION IN PUBLIC ACCOMMODATIONS.—Section 201 of the  
8 Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

9 (1) in subsection (a), by inserting “sex,” before  
10 “or national origin”; and

11 (2) in subsection (b)—

12 (A) in paragraph (3), by striking “sta-  
13adium” and all that follows and inserting “sta-  
14adium or other place or establishment that pro-  
15vides exhibition, entertainment, recreation, exer-  
16cise, amusement, gathering, or display;”;

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

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

21 “(4) any establishment that provides a good,  
22 service, or program, including a store, shopping cen-  
23ter, online retailer or service provider, salon, bank,  
24 gas station, food bank, service or care center, shel-  
25ter, travel agency, funeral parlor, or any establish-

1       ment that provides health care, accounting, or legal  
2       services;

3             “(5) any train service, bus service, car service,  
4       taxi service, airline service, station, depot, or other  
5       place of or establishment that provides transpor-  
6       tation service; and”.

7       (b) PROHIBITION ON DISCRIMINATION OR SEGREGA-  
8       TION UNDER LAW.—Section 202 of such Act (42 U.S.C.  
9       2000a–1) is amended by inserting “sex,” before “or na-  
10      tional origin”.

11      (c) DEFINITIONS AND RULES OF CONSTRUCTION.—  
12      Title II of such Act (42 U.S.C. 2000a et seq.) is amended  
13      by adding at the end the following:

14      **“SEC. 208. DEFINITIONS AND RULES.**

15      “(a) DEFINITIONS.—

16             “(1) RACE; COLOR; RELIGION; SEX; SEXUAL  
17      ORIENTATION; GENDER IDENTITY; NATIONAL ORI-  
18      GIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex (includ-  
19      ing sexual orientation and gender identity)’, or ‘na-  
20      tional origin’, used with respect to an individual, in-  
21      cludes—

22             “(A) the race, color, religion, sex (includ-  
23      ing sexual orientation and gender identity), or  
24      national origin, respectively, of another person

1 with whom the individual is associated or has  
2 been associated;

3 “(B) a perception or belief, even if inac-  
4 curate, concerning the race, color, religion, sex  
5 (including sexual orientation and gender iden-  
6 tity), or national origin, respectively, of the in-  
7 dividual; and

8 “(C) in the case of race, traits historically  
9 associated with race, including natural hair tex-  
10 ture and protective hairstyles.

11 “(2) GENDER IDENTITY.—The term ‘gender  
12 identity’ means the gender-related identity, appear-  
13 ance, mannerisms, or other gender-related character-  
14 istics of an individual, regardless of the individual’s  
15 designated sex at birth.

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

19 “(4) NATURAL HAIRSTYLES.—The term ‘nat-  
20 ural hair’ includes—

21 “(A) protective and natural hairstyles,  
22 which includes braids, locs, weaves, twists,  
23 afros; and

1           “(B) natural hair texture, which includes  
2 wavy, kinky, curl, and coily, and also the vari-  
3 ation of texture in between.

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

5           “(A) a sex stereotype;

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

8           “(C) sexual orientation or gender identity;  
9 and

10           “(D) sex characteristics, including intersex  
11 traits.

12           “(6) SEXUAL ORIENTATION.—The term ‘sexual  
13 orientation’ means an individual’s actual or per-  
14 ceived romantic, physical, or sexual attraction to  
15 other persons, or lack thereof, that includes hetero-  
16 sexuality, homosexuality, and bisexuality.

17           “(b) RULES.—In providing a remedy under this Act:

18           “(1) In the case of any conduct alleged to be  
19 discriminatory on the basis of sex, the remedy under  
20 this Act for such conduct, to the extent it pertains  
21 to pregnancy, childbirth, or a related medical condi-  
22 tion may not result in a less substantial remedy than  
23 any other remedy for discrimination on the basis of  
24 sex.



1           “(2) In the case of any conduct alleged to be  
2           discriminatory on the basis of sex (with respect to  
3           gender identity), an individual shall not be denied  
4           access to a shared facility, including a restroom, a  
5           locker room, and a dressing room, that is in accord-  
6           ance with the individual’s gender identity.

7   **“SEC. 209. RULES OF CONSTRUCTION.**

8           “(a) CLAIMS AND REMEDIES NOT PRECLUDED.—  
9           Nothing in this title shall be construed to limit the claims  
10          or remedies available to any individual for an unlawful  
11          practice on the basis of race, color, religion, sex, or na-  
12          tional origin including claims brought pursuant to section  
13          1979 or 1980 of the Revised Statutes (42 U.S.C. 1983,  
14          1985) or any other law, including the Federal law amend-  
15          ed by the Customer Non-Discrimination Act, regulation,  
16          or policy.

17          “(b) NO NEGATIVE INFERENCE.—Nothing in this  
18          title shall be construed to support any inference that any  
19          Federal law prohibiting a practice on the basis of sex does  
20          not prohibit discrimination on the basis of pregnancy,  
21          childbirth, or a related medical condition, sexual orienta-  
22          tion, gender identity, or a sex stereotype.

23          “(c) SCOPE OF AN ESTABLISHMENT.—A reference in  
24          this title to an establishment—

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

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

6 **“SEC. 210. CLAIMS.**

7           “The Religious Freedom Restoration Act of 1993 (42  
8 U.S.C. 2000bb et seq.) shall not provide a claim con-  
9 cerning, or a defense to a claim under this title or provide  
10 a basis for challenging the application or enforcement of  
11 this title.”.

12 **SEC. 7. STRICT VICARIOUS EMPLOYER LIABILITY AND**  
13 **FARAGHER-ELLERTH AFFIRMATIVE DEFENSE**  
14 **REMOVED.**

15           Section 706 of the Civil Rights Act of 1964 (42  
16 U.S.C. 2000e–5 et seq.) is amended by adding at the end  
17 the following:

18           “(l) An employer shall be liable for any act of dis-  
19 crimination prohibited under this title (including harass-  
20 ment, intimidation, or retaliation) committed by any of its  
21 employees.

22           “(m) It shall not be a defense to a claim under this  
23 title or provide a basis for challenging the application or  
24 enforcement of this title—

1           “(1) that an employer exercised reasonable care  
2           in attempting to prevent or took corrective action re-  
3           garding any act of discrimination on the basis of sex  
4           (including intimidation, harassment, or retaliation);

5           “(2) that adverse employment action was not  
6           taken by such an employer; or

7           “(3) that an employee affected by that act did  
8           not take advantage of preventive opportunities to  
9           avoid harm.”.

10 **SEC. 8. ARBITRATION OF EMPLOYMENT, CONSUMER, AND**  
11 **CIVIL RIGHTS DISPUTES.**

12           (a) **PURPOSES.**—The purposes of this section are  
13 to—

14           (1) prohibit predispute arbitration agreements  
15           that force arbitration of future employment, con-  
16           sumer, or civil rights disputes; and

17           (2) prohibit agreements and practices that  
18           interfere with the right of individuals, workers, and  
19           small businesses to participate in a joint, class, or  
20           collective action related to an employment, con-  
21           sumer, or civil rights dispute.

22           (b) **IN GENERAL.**—Title 9 of the United States Code  
23 is amended by adding at the end the following:

1 **“CHAPTER 4—ARBITRATION OF EMPLOY-**  
2 **MENT, CONSUMER, AND CIVIL RIGHTS**  
3 **DISPUTES**

4 **“SEC. 401. DEFINITIONS.**

5 “In this chapter—

6 “(1) the term ‘civil rights dispute’ means a dis-  
7 pute—

8 “(A) arising from an alleged violation of—

9 “(i) the Constitution of the United  
10 States or the constitution of a State; and

11 “(ii) any Federal, State, or local law  
12 that prohibits discrimination on the basis  
13 of race, sex, age, gender identity, sexual  
14 orientation, disability, religion, national or-  
15 igin, or any legally protected status in edu-  
16 cation, employment, credit, housing, public  
17 accommodations and facilities, voting, vet-  
18 erans or servicemembers, health care, or a  
19 program funded or conducted by the Fed-  
20 eral Government or State government, in-  
21 cluding any law referred to or described in  
22 section 62(e) of the Internal Revenue Code  
23 of 1986, including parts of such law not  
24 explicitly referenced in such section but

1           that relate to protecting individuals on any  
2           such basis; and

3           “(B) in which at least one party alleging a  
4           violation described in subparagraph (A) is one  
5           or more individuals (or their authorized rep-  
6           resentative), including one or more individuals  
7           seeking certification as a class under rule 23 of  
8           the Federal Rules of Civil Procedure or a com-  
9           parable rule or provision of State law;

10          “(2) the term ‘consumer dispute’ means a dis-  
11          pute between—

12                 “(A) one or more individuals who seek or  
13                 acquire real or personal property, services (in-  
14                 cluding services related to digital technology),  
15                 securities or other investments, money, or credit  
16                 for personal, family, or household purposes in-  
17                 cluding an individual or individuals who seek  
18                 certification as a class under rule 23 of the  
19                 Federal Rules of Civil Procedure or a com-  
20                 parable rule or provision of State law; and

21                 “(B)(i) the seller or provider of such prop-  
22                 erty, services, securities or other investments,  
23                 money, or credit; or

24                 “(ii) a third party involved in the selling,  
25                 providing of, payment for, receipt or use of in-

1           formation about, or other relationship to any  
2           such property, services, securities or other in-  
3           vestments, money, or credit;

4           “(3) the term ‘employment dispute’ means a  
5           dispute between one or more individuals (or their  
6           authorized representative) and a person arising out  
7           of or related to the work relationship or prospective  
8           work relationship between them, including a dispute  
9           regarding the terms of or payment for, advertising  
10          of, recruiting for, referring of, arranging for, or dis-  
11          cipline or discharge in connection with, such work,  
12          regardless of whether the individual is or would be  
13          classified as an employee or an independent con-  
14          tractor with respect to such work, and including a  
15          dispute arising under any law referred to or de-  
16          scribed in section 62(e) of the Internal Revenue  
17          Code of 1986, including parts of such law not explic-  
18          itly referenced in such section but that relate to pro-  
19          tecting individuals on any such basis, and including  
20          a dispute in which an individual or individuals seek  
21          certification as a class under rule 23 of the Federal  
22          Rules of Civil Procedure or as a collective action  
23          under section 16(b) of the Fair Labor Standards  
24          Act, or a comparable rule or provision of State law;

1           “(4) the term ‘predispute arbitration agree-  
2           ment’ means an agreement to arbitrate a dispute  
3           that has not yet arisen at the time of the making  
4           of the agreement; and

5           “(5) the term ‘predispute joint-action waiver’  
6           means an agreement, whether or not part of a  
7           predispute arbitration agreement, that would pro-  
8           hibit, or waive the right of, one of the parties to the  
9           agreement to participate in a joint, class, or collec-  
10          tive action in a judicial, arbitral, administrative, or  
11          other forum, concerning a dispute that has not yet  
12          arisen at the time of the making of the agreement.

13 **“SEC. 402. NO VALIDITY OR ENFORCEABILITY.**

14          “(a) IN GENERAL.—Notwithstanding any other pro-  
15          vision of this title, no predispute arbitration agreement or  
16          predispute joint-action waiver shall be valid or enforceable  
17          with respect to an employment dispute, consumer dispute,  
18          or civil rights dispute.

19          “(b) APPLICABILITY.—

20                 “(1) IN GENERAL.—An issue as to whether this  
21          chapter applies with respect to a dispute shall be de-  
22          termined under Federal law. The applicability of this  
23          chapter to an agreement to arbitrate and the validity  
24          and enforceability of an agreement to which this  
25          chapter applies shall be determined by a court, rath-

1 er than an arbitrator, irrespective of whether the  
2 party resisting arbitration challenges the arbitration  
3 agreement specifically or in conjunction with other  
4 terms of the contract containing such agreement,  
5 and irrespective of whether the agreement purports  
6 to delegate such determinations to an arbitrator.

7 “(2) COLLECTIVE BARGAINING AGREEMENTS.—  
8 Nothing in this chapter shall apply to any arbitra-  
9 tion provision in a contract between an employer and  
10 a labor organization or between labor organizations,  
11 except that no such arbitration provision shall have  
12 the effect of waiving the right of a worker to seek  
13 judicial enforcement of a right arising under a provi-  
14 sion of the Constitution of the United States, a  
15 State constitution, or a Federal or State statute, or  
16 public policy arising therefrom.”

17 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

18 (1) IN GENERAL.—Title 9 of the United States  
19 Code is amended—

20 (A) in section 1 by striking “of seamen,”  
21 and all that follows through “interstate com-  
22 merce,” and inserting in its place “of individ-  
23 uals, regardless of whether such individuals are  
24 designated as employees or independent con-  
25 tractors for other purposes”,



1 (B) in section 2 by inserting “or as other-  
2 wise provided in chapter 4” before the period at  
3 the end,

4 (C) in section 208—

5 (i) in the section heading by striking  
6 **“CHAPTER 1; RESIDUAL APPLICA-**  
7 **TION”** and inserting **“APPLICATION”**,  
8 and

9 (ii) by adding at the end the fol-  
10 lowing: “This chapter applies to the extent  
11 that this chapter is not in conflict with  
12 chapter 4.”, and

13 (D) in section 307—

14 (i) in the section heading by striking  
15 **“CHAPTER 1; RESIDUAL APPLICA-**  
16 **TION”** and inserting **“APPLICATION”**,  
17 and

18 (ii) by adding at the end the fol-  
19 lowing: “This chapter applies to the extent  
20 that this chapter is not in conflict with  
21 chapter 4.”.

22 (2) TABLE OF SECTIONS.—

23 (A) CHAPTER 2.—The table of sections of  
24 chapter 2 of title 9, United States Code, is

1           amended by striking the item relating to section  
2           208 and inserting the following:

“208. Application.”.

3                   (B) CHAPTER 3.—The table of sections of  
4           chapter 3 of title 9, United States Code, is  
5           amended by striking the item relating to section  
6           307 and inserting the following:

“307. Application.”.

7                   (3) TABLE OF CHAPTERS.—The table of chap-  
8           ters of title 9, United States Code, is amended by  
9           adding at the end the following:

“4. Arbitration of employment, consumer, antitrust, and civil rights disputes.”.

10 **SEC. 9. LIABILITY OF CERTAIN GOVERNMENT OFFICIALS.**

11           In any action under Revised Statute 1979, the fol-  
12           lowing shall apply:

13                   (1) DEFINITION OF STATE.—The term “State”  
14           includes any person or entity that undertakes action  
15           under color of any statute, ordinance, regulation,  
16           custom, or usage, of any State or Territory or the  
17           District of Columbia.

18                   (2) ACTION UNDER COLOR OF LAW.—A private  
19           person or entity undertakes action under color of  
20           any statute, ordinance, regulation, custom, or usage,  
21           of any State or Territory or the District of Colum-  
22           bia, when—

1 (A) undertaking a public function dele-  
2 gated by a State or local government;

3 (B) voluntarily undertaking a public func-  
4 tion;

5 (C) acting in concert with a State or local  
6 government or acting in concert with an indi-  
7 vidual officer, agent, or entity of a State or  
8 local government;

9 (D) engaging in joint action towards a  
10 common goal or plan with a State or local gov-  
11 ernment or engaging in joint action towards a  
12 common goal or plan with an individual officer,  
13 agent, or entity of a State or local government;

14 (E) engaged in a conspiracy with a State  
15 or local government or engaged in a conspiracy  
16 with an individual officer, agent, or entity of a  
17 State or local government;

18 (F) a close nexus exists between the pri-  
19 vate person or entity and a State or local gov-  
20 ernment or a close nexus exists between an in-  
21 dividual officer, agent, or entity of a State or  
22 local government;

23 (G) the activities of the private person or  
24 entity is so entwined with a State or local gov-  
25 ernment or an individual officer, agent, or enti-

1           ty of a State or local government such that the  
2           private person or entity is fairly considered to  
3           be acting under color of law; or

4                   (H) otherwise exercises powers tradition-  
5           ally reserved to State or local government.

6           (3) PRESUMPTION.—A private person or entity  
7           is presumed to be acting under color of law when,  
8           pursuant to a contract or other legally binding  
9           agreement with a State or local government, the pri-  
10          vate person or entity exercises any power of that  
11          State or local government or the private person or  
12          entity otherwise undertakes the administration, op-  
13          erations, or other activities of: the judiciary, law en-  
14          forcement, public education, jails or prisons, elec-  
15          tions, municipal water services, municipal waste re-  
16          moval, evictions, public parks, or public benefits pro-  
17          grams.

18          (4) NO DEFENSE OF QUALIFIED IMMUNITY.—  
19          Qualified immunity is not a defense in an action  
20          brought against any person who under color of any  
21          statute, ordinance, regulation, custom, or usage, of  
22          any State or Territory or the District of Columbia,  
23          subjects, or causes to be subjected, any citizen of the  
24          United States or other person within the jurisdiction

1       thereof to the deprivation of any rights, privileges,  
2       or immunities secured by the Constitution and laws.

3           (5) RESPONDEAT SUPERIOR.—In the case of  
4       any official of any political subdivision of a State, if  
5       that official, acting under color of law, violates any  
6       provision of this Act, that official shall be amenable  
7       to any suit under this Act, and the political subdivi-  
8       sion may be held liable for the acts of that official,  
9       whether acting in his or her official or individual ca-  
10      pacity.

11 **SEC. 10. EXPLICIT INCLUSION OF RULEMAKINGS.**

12       Section 1003(a)(1) of the Rehabilitation Act Amend-  
13      ments of 1986 (42 U.S.C. 2000d–7(a)(1)) is amended by  
14      inserting before the period at the end the following: “(in-  
15      cluding the provisions of any rule made to implement any  
16      of the foregoing statutes)”.

17 **SEC. 11. CONSTRUCTION.**

18       (a) RELIEF.—Nothing in this Act, including any  
19      amendment made by this Act, shall be construed to limit  
20      the scope of, or the relief available under, section 504 of  
21      the Rehabilitation Act of 1973 (29 U.S.C. 794), the Amer-  
22      icans with Disabilities Act of 1990 (42 U.S.C. 12101 et  
23      seq.), or any other provision of law.

24       (b) DEFENDANTS.—Nothing in this Act, including  
25      any amendment made by this Act, shall be construed to

1 limit the scope of the class of persons who may be sub-  
2 jected to civil actions under the covered civil rights provi-  
3 sions.

4 (c) SEVERABILITY.—If any provision of this Act, or  
5 the application of such a provision to any person or cir-  
6 cumstance, is held to be unconstitutional, the remainder  
7 of this Act and the application of the remaining provisions  
8 of this Act to any person or circumstance shall not be af-  
9 fected thereby.

10 (d) ARBITRATION.—Nothing in this Act, or the  
11 amendments made by this Act, shall be construed to pro-  
12 hibit the use of arbitration on a voluntary basis after a  
13 dispute arises.

14 **SEC. 12. EFFECTIVE DATE.**

15 (a) IN GENERAL.—This Act, and the amendments  
16 made by this Act, take effect on the date of enactment  
17 of this Act.

18 (b) APPLICATION.—This Act, and the amendments  
19 made by this Act, apply to all actions or proceedings pend-  
20 ing on or after the date of enactment of this Act, and,  
21 in the case of section 8 and the amendments made there-  
22 by, shall apply with respect to any dispute or claim that  
23 arises or accrues on or after such date.

○