

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ASHTON WHITAKER, a minor, by his
mother and next friend, MELISSA
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT
NO. 1 BOARD OF EDUCATION and SUE
SAVAGLIO-JARVIS, in her official capacity
as Superintendent of the Kenosha Unified
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943-PP
Judge Pamela Pepper

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff respectfully submits the following authorities requested by the Court and/or referenced by Plaintiff's counsel at the September 6, 2016 hearing in this case.

1. The Court requested citations to cases defining "gender" separately from "sex." Although federal courts typically use both the terms "sex" and "gender" to refer to the discrimination prohibited by Title IX, Title VII, and other sex discrimination laws, the Seventh Circuit and other courts have expressly acknowledged that the term "gender" refers more broadly to one's sex-related characteristics, not simply to so-called "biological" sex. *See Doe v. City of Belleville*, 119 F.3d 563, 580 (7th Cir. 1997), *vacated on other grounds*, 523 U.S. 1001 (1998) ("H. Doe apparently was singled out for this abuse because the way in which he projected the sexual aspect of his personality (and by that we mean his gender) did not conform to his

coworkers’ view of appropriate masculine behavior”);¹ *see also Glenn v. Brumby*, 663 F.3d 1312, 1317, 1318 n.5 (11th Cir. 2011) (“[F]ederal courts have recognized with near-total uniformity that the approach in *Holloway*, *Sommers*, and *Ulane* has been eviscerated by *Price Waterhouse*’s holding that Title VII’s reference to ‘sex’ encompasses both the biological differences between men and women, and gender discrimination, that is, discrimination based on a failure to conform to stereotypical gender norms.”) (internal citations, quotation marks, and modifications omitted); *Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir. 2004) (“As Judge Posner has pointed out, the term ‘gender’ is one ‘borrowed from grammar to designate the sexes as viewed as social rather than biological classes.’”) (quoting R. Posner, *Sex & Reason*, 24-25 (1992)); *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000) (“‘[S]ex’ under Title VII encompasses both sex—that is, the biological differences between men and women—and gender.”); *cf. J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 157 n.1 (1994) (Scalia, J., dissenting) (“The word ‘gender’ has acquired the new and useful connotation of cultural or attitudinal characteristics (as opposed to physical characteristics) distinctive to the sexes.”); *accord* Am. Heritage Dictionary (5th ed. 2016) (alternatively defining “gender” as “[e]ither of the two divisions, designated female and male, by which most organisms are classified on the basis of their reproductive organs and functions; sex” and “[o]ne’s *identity* as female or male or as neither entirely female nor entirely male.”) (emphasis added).

2. The Court requested authority on whether restrooms are covered by Title IX.

School restrooms are part of a school’s education program or activity and are covered by Title

¹ The Seventh Circuit found that harassment of plaintiff H. Doe, including questioning of his sex (a coworker “asked whether [H.] was ‘a boy or a girl’ . . . [and H.] was backed up to a wall and his testicles grabbed so that [the coworker] might ‘finally find out if [H. is] a girl or a guy’”), was gender-based harassment under Title VII and the Equal Protection Clause. *Doe*, 119 F.3d at 568.

IX. *See* 34 C.F.R. § 106.31(b) (Title IX’s prohibitions include discriminating “in providing any aid, benefit, or service” and “limit[ing] any person in the enjoyment of any right, privilege, advantage, or opportunity”); *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 718 n.4 (4th Cir. 2016) (“We have little difficulty concluding that access to a restroom at a school, under this regulation, can be considered either an ‘aid, benefit, or service’ or a ‘right, privilege, advantage, or opportunity,’ which, when offered by a recipient institution, falls within the meaning of ‘educational program’ as used in Title IX and defined by the Department’s implementing regulations.”); *Carcaño v. McCrory*, 2016 WL 4508192, at *11 (M.D.N.C. Aug. 26, 2016).

3. At the hearing, Plaintiff’s counsel referenced the May 2, 2016 letter from forty U.S. Senators, led by Senators Franken and Baldwin, to Secretary of Education King (attached as Ex. A), which endorsed the interpretation of Title IX to include gender identity discrimination and requested that the Department of Education issue further guidance to schools on Title IX’s application to transgender students. Senator Franken is the author of the Student Non-Discrimination Act (“SNDA”) which would explicitly prohibit discrimination against students based on gender identity and sexual orientation. S. 439 § 4(a) (114th Cong. 2015) (attached as Ex. B). SNDA contains the express Congressional finding that the federal government and courts have “correctly interpreted” Title IX to cover gender identity discrimination, but that the lack of an express statutory prohibition “has created unnecessary uncertainty” for students and parents:

The Department of Education and the Department of Justice, as well as numerous courts, have correctly interpreted the prohibitions on sex discrimination to include discrimination based on sex stereotypes and gender identity, even when that sex-based discrimination coincides or overlaps with discrimination based on sexual orientation. However, the absence of express Federal law prohibitions on discrimination on the basis of sexual orientation and gender identity has created unnecessary uncertainty that risks limiting access to legal remedies under Federal law for LGBT students and their parents.

S. 439 § 2(a)(6) (114th Cong. 2015).

Dated: September 9, 2016

Respectfully submitted,

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** Application for admission to this Court to follow*

EXHIBIT A

**Letter from U.S. Senators to U.S. Secretary of Education John King
(May 2, 2016), available at
www.franken.senate.gov/files/documents/160502SenateTitleIXLetter.pdf**

United States Senate

WASHINGTON, DC 20510

May 2, 2016

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary King:

As senators committed to ensuring that *all* students—including lesbian, gay, bisexual, and transgender (LGBT) students—have access to a public education in an environment free from discrimination, we are writing to request that the Department of Education explain the scope of protections afforded to LGBT students under Title IX of the Education Amendments of 1972 (Title IX) and clarify that state laws requiring discrimination against LGBT students run afoul of Title IX and jeopardize states' and school districts' continued receipt of federal funding.

Title IX prohibits discrimination “on the basis of sex”¹ in any educational program or activity that receives federal funding—including public primary and secondary schools, public colleges and universities, and private schools and universities that accept student loans or federal funds. While Title IX is widely known for increasing women’s and girls’ participation in sports, this landmark civil rights law guards against sex discrimination in all aspects of educational opportunity, including harassment, housing, admissions and recruiting, and financial aid. Virtually all public schools and public and private colleges and universities in the country receive federal funding from the Department of Education and other federal agencies. Institutions that fall short of their obligations under Title IX risk the suspension or termination of federal funding.

Consistent with caselaw in the area of employment discrimination, both your Department and the Department of Justice (DOJ) have clarified that Title IX’s prohibition on sex discrimination prohibits discrimination on the basis of gender identity. The Department of Education issued guidance clarifying that Title IX prohibits gender-based harassment of students,² including discrimination against transgender and gender non-conforming students,³ and failure to respect transgender students’ gender identity when operating single-sex classes.⁴ Both DOJ and the Department of Education have applied this interpretation of Title IX to support transgender students challenging school policies banning them from using the restroom or locker room that

¹ 20 U.S.C. § 1681.

² *Dear Colleague Letter: Harassment and Bullying*, U.S. Department Of Education, 8 (October 26, 2010), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

³ *Questions and Answers on Title IX and Sexual Violence*, U.S. Department Of Education, 5 (April 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁴ *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*, U.S. Department Of Education, (December 25, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

corresponds with their gender identity.⁵ DOJ explained that “[t]reating a student adversely because the sex assigned to him at birth does not match his gender identity is literally discrimination ‘on the basis of sex.’ . . . Prohibiting a transgender male student from using boys’ restrooms, when other non-transgender male students face no such restriction, deprives him not only of equal educational opportunity but also ‘of equal status, respect, and dignity.’”⁶ Recently, the U.S. Court of Appeals for the Fourth Circuit agreed with the administration’s interpretation that Title IX protects the rights of transgender students to use sex segregated facilities that are consistent with their gender identity—a significant victory.⁷ The Departments’ interpretation and enforcement of Title IX is consistent with courts’ and federal agencies’ interpretations of other sex discrimination statutes, including Title VII.

However, despite the important steps the federal government has taken to secure equality for transgender and gender non-conforming students, state legislators are pursuing policies that seek to halt this progress. North Carolina’s recent enactment of House Bill 2, a discriminatory measure that forbids transgender students appropriate access to bathrooms and locker rooms, provoked a swift backlash from business leaders, the National Basketball Association, the National Collegiate Athletic Association, and even the leading Republican candidate for president. Nonetheless, state legislators in Tennessee, Kansas, South Carolina, and Minnesota continued to push similar measures.

In the face of ongoing legislative assaults on LGBT students, and transgender students in particular, we remain concerned that the Department of Education has not yet further clarified that schools permitting discrimination against LGBT students to continue unabated risk losing their eligibility for federal funds. Although the Department of Education has stated that Title IX covers gender identity discrimination, including for single-sex classrooms and sexual harassment, it has not yet provided specific guidance to schools on how these protections apply in the myriad other circumstances experienced by transgender students in schools. Last week, the *New York Times* reported that the Department of Education has drafted guidance for school administrators on their obligations to LGBT students under Title IX.⁸ We urge the Department to release that guidance now.

We strongly believe that it is our responsibility—not just as senators, but as adults—to protect our children and young people, and to help them flourish. We applaud and thank the Department of Education, as well as the Department of Justice, for sharing that goal, and for their commitment to equality and work in support of LGBT students. We respectfully request that the Department complete that work by issuing clear, comprehensive guidance.

⁵ See Brief for the United States as *Amici Curiae* Supporting Appellant, *G.G. v. Gloucester County School Board*, No. 15-2056 (4th Cir. Oct. 28, 2015); Statement of Interest of the United States, *Tooley v. Van Buren Public Schools*, No. 2:14-cv-13466-AC-DRG (E.D. Mich. Feb. 24, 2015); Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, <https://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

⁶ Brief for the United States as *Amici Curiae* Supporting Appellant, *G.G. v. Gloucester County School Board*, No. 15-2056, 14 (4th Cir. Oct. 28, 2015) (internal citations omitted).

⁷ *G.G. v. Gloucester County School Board*, No. 15-2056 (4th Cir. Apr. 19, 2016).

⁸ Editorial, *Transgender Bathroom Hysteria, Cont’d.*, N.Y. TIMES, Apr. 18, 2016, at A20.

Sincerely,



AL FRANKEN
United States Senator



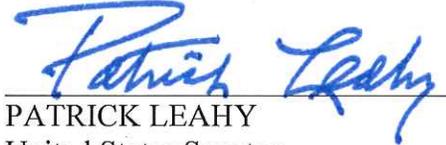
TAMMY BALDWIN
United States Senator



HARRY REID
United States Senator



PATTY MURRAY
United States Senator



PATRICK LEAHY
United States Senator



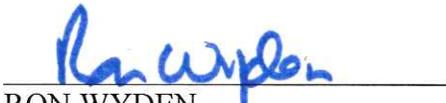
BARBARA A. MIKULSKI
United States Senator



DIANNE FEINSTEIN
United States Senator



BARBARA BOXER
United States Senator



RON WYDEN
United States Senator



RICHARD J. DURBIN
United States Senator



JACK REED
United States Senator



CHARLES E. SCHUMER
United States Senator



THOMAS R. CARPER
United States Senator



DEBBIE STABENOW
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MARIA CANTWELL
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ROBERT MENENDEZ
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BERNARD SANDERS
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SHERROD BROWN
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ROBERT P. CASEY, JR.
United States Senator



CLAIRE MCCASKILL
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AMY KLOBUCHAR
United States Senator



SHELDON WHITEHOUSE
United States Senator



TOM UDALL
United States Senator



JEANNE SHAHEEN
United States Senator



MARK R. WARNER
United States Senator



JEFFREY A. MERKLEY
United States Senator



MICHAEL F. BENNET
United States Senator



KIRSTEN E. GILLIBRAND
United States Senator



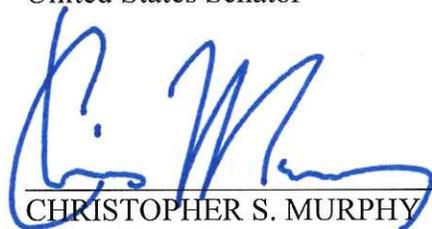
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United States Senator



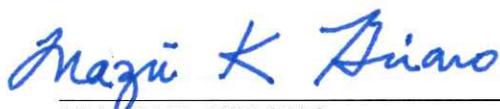
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United States Senator



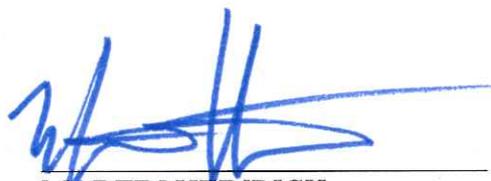
BRIAN SCHATZ
United States Senator



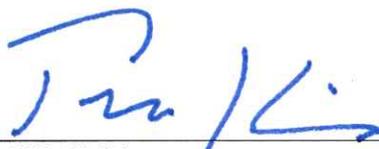
CHRISTOPHER S. MURPHY
United States Senator



MAZIE K. HIRONO
United States Senator



MARTIN HEINRICH
United States Senator



TIM KAINE
United States Senator



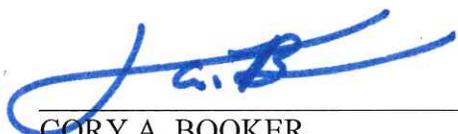
ELIZABETH WARREN
United States Senator



HEIDI HEITKAMP
United States Senator



EDWARD J. MARKEY
United States Senator



CORY A. BOOKER
United States Senator



GARY C. PETERS
United States Senator

EXHIBIT B

**Student Non-Discrimination Act of 2015, S. 439
(114th Cong. 2015)**

114TH CONGRESS
1ST SESSION

S. 439

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

Mr. FRANKEN (for himself, Mr. BENNET, Mr. BROWN, Mr. COONS, Mr. DURBIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. SCHATZ, Mr. SCHUMER, Mrs. SHAHEEN, Mr. PETERS, Mr. UDALL, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, Mrs. GILLIBRAND, Ms. KLOBUCHAR, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, 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 “Student Non-Discrimi-
5 nation Act of 2015”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) Public school students who are lesbian, gay,
2 bisexual, or transgender (referred to in this Act as
3 “LGBT”), or are perceived to be LGBT, or who as-
4 sociate with LGBT people, have been and are sub-
5 jected to pervasive discrimination, including harass-
6 ment, bullying, intimidation, and violence, and have
7 been deprived of equal educational opportunities, in
8 schools in every part of the Nation.

9 (2) While discrimination of any kind is harmful
10 to students and to the education system, actions
11 that target students based on sexual orientation or
12 gender identity represent a distinct and severe prob-
13 lem that remains inadequately addressed by current
14 Federal law.

15 (3) Numerous social science studies dem-
16 onstrate that discrimination at school has contrib-
17 uted to high rates of absenteeism, academic under-
18 achievement, dropping out, and adverse physical and
19 mental health consequences among LGBT youth.

20 (4) When left unchecked, discrimination in
21 schools based on sexual orientation or gender iden-
22 tity can lead, and has led, to life-threatening violence
23 and to suicide.

24 (5) Public school students enjoy a variety of
25 constitutional rights, including rights to equal pro-

1 tection, privacy, and free expression, which are in-
2 fringed when school officials engage in or fail to take
3 prompt and effective action to stop discrimination on
4 the basis of sexual orientation or gender identity.

5 (6) Provisions of Federal statutory law ex-
6 pressly prohibit discrimination on the basis of race,
7 color, sex, religion, disability, and national origin.
8 The Department of Education and the Department
9 of Justice, as well as numerous courts, have cor-
10 rectly interpreted the prohibitions on sex discrimina-
11 tion to include discrimination based on sex stereo-
12 types and gender identity, even when that sex-based
13 discrimination coincides or overlaps with discrimina-
14 tion based on sexual orientation. However, the ab-
15 sence of express Federal law prohibitions on dis-
16 crimination on the basis of sexual orientation and
17 gender identity has created unnecessary uncertainty
18 that risks limiting access to legal remedies under
19 Federal law for LGBT students and their parents.

20 (b) PURPOSES.—The purposes of this Act are—

21 (1) to ensure that all students have access to
22 public education in a safe environment free from dis-
23 crimination, including harassment, bullying, intimi-
24 dation, and violence, on the basis of sexual orienta-
25 tion or gender identity;

1 (2) to provide a comprehensive Federal prohibi-
2 tion of discrimination in public schools based on ac-
3 tual or perceived sexual orientation or gender iden-
4 tity;

5 (3) to provide meaningful and effective rem-
6 edies for discrimination in public schools based on
7 actual or perceived sexual orientation or gender
8 identity;

9 (4) to invoke congressional powers, including
10 the power to enforce the 14th Amendment to the
11 Constitution of the United States and to provide for
12 the general welfare pursuant to section 8 of article
13 I of the Constitution and the power to make all laws
14 necessary and proper for the execution of the fore-
15 going powers pursuant to section 8 of article I of the
16 Constitution, in order to prohibit discrimination in
17 public schools on the basis of sexual orientation or
18 gender identity; and

19 (5) to allow the Department of Education and
20 the Department of Justice to effectively combat dis-
21 crimination based on sexual orientation and gender
22 identity in public schools, through regulation and en-
23 forcement, as the Departments have issued regula-
24 tions under and enforced title IX of the Education
25 Amendments of 1972 (20 U.S.C. 1681 et seq.) and

1 other nondiscrimination laws in a manner that effec-
2 tively addresses discrimination.

3 **SEC. 3. DEFINITIONS AND RULE.**

4 (a) DEFINITIONS.—For purposes of this Act:

5 (1) EDUCATIONAL AGENCY.—The term “edu-
6 cational agency” means a local educational agency,
7 an educational service agency, or a State educational
8 agency, as those terms are defined in section 9101
9 of the Elementary and Secondary Education Act of
10 1965 (20 U.S.C. 7801).

11 (2) GENDER IDENTITY.—The term “gender
12 identity” means the gender-related identity, appear-
13 ance, or mannerisms or other gender-related charac-
14 teristics of an individual, with or without regard to
15 the individual’s designated sex at birth.

16 (3) HARASSMENT.—The term “harassment”
17 means conduct that is sufficiently severe, persistent,
18 or pervasive to limit a student’s ability to participate
19 in or benefit from a program or activity of a public
20 school or educational agency, including acts of
21 verbal, nonverbal, or physical aggression, intimidat-
22 ion, or hostility, if such conduct is based on—

23 (A) a student’s actual or perceived sexual
24 orientation or gender identity; or

1 (B) the actual or perceived sexual orienta-
2 tion or gender identity of a person with whom
3 a student associates or has associated.

4 (4) PROGRAM OR ACTIVITY.—The terms “pro-
5 gram or activity” and “program” have the same
6 meanings given such terms as applied under section
7 606 of the Civil Rights Act of 1964 (42 U.S.C.
8 2000d–4a) to the operations of public entities under
9 paragraph (2)(B) of such section.

10 (5) PUBLIC SCHOOL.—The term “public
11 school” means an elementary school (as the term is
12 defined in section 9101 of the Elementary and Sec-
13 ondary Education Act of 1965 (20 U.S.C. 7801))
14 that is a public institution, and a secondary school
15 (as so defined) that is a public institution.

16 (6) SEXUAL ORIENTATION.—The term “sexual
17 orientation” means homosexuality, heterosexuality,
18 or bisexuality.

19 (7) STUDENT.—The term “student” means an
20 individual within the age limits for which the State
21 provides free public education who is enrolled in a
22 public school or who, regardless of official enroll-
23 ment status, attends classes or participates in the
24 programs or activities of a public school or local edu-
25 cational agency.

1 (b) RULE.—Consistent with Federal law, in this Act
2 the term “includes” means “includes but is not limited
3 to”.

4 **SEC. 4. PROHIBITION AGAINST DISCRIMINATION.**

5 (a) IN GENERAL.—No student shall, on the basis of
6 actual or perceived sexual orientation or gender identity
7 of such individual or of a person with whom the student
8 associates or has associated, be excluded from participa-
9 tion in, be denied the benefits of, or be subjected to dis-
10 crimination under any program or activity receiving Fed-
11 eral financial assistance.

12 (b) HARASSMENT.—For purposes of this Act, dis-
13 crimination includes harassment of a student on the basis
14 of actual or perceived sexual orientation or gender identity
15 of such student or of a person with whom the student as-
16 sociates or has associated.

17 (c) RETALIATION PROHIBITED.—

18 (1) PROHIBITION.—No person shall be excluded
19 from participation in, be denied the benefits of, or
20 be subjected to discrimination, retaliation, or re-
21 prisal under any program or activity receiving Fed-
22 eral financial assistance based on the person’s oppo-
23 sition to conduct made unlawful by this Act.

1 (2) DEFINITION.—For purposes of this sub-
2 section, “opposition to conduct made unlawful by
3 this Act” includes—

4 (A) opposition to conduct believed to be
5 made unlawful by this Act or conduct that
6 could be believed to become unlawful under this
7 Act if allowed to continue;

8 (B) any formal or informal report, whether
9 oral or written, to any governmental entity, in-
10 cluding public schools and educational agencies
11 and employees of the public schools or edu-
12 cational agencies, regarding conduct made un-
13 lawful by this Act, conduct believed to be made
14 unlawful by this Act, or conduct that could be
15 believed to become unlawful under this Act if
16 allowed to continue;

17 (C) participation in any investigation, pro-
18 ceeding, or hearing related to conduct made un-
19 lawful by this Act, conduct believed to be made
20 unlawful by this Act, or conduct that could be
21 believed to become unlawful under this Act if
22 allowed to continue; and

23 (D) assistance or encouragement provided
24 to any other person in the exercise or enjoy-

1 ment of any right granted or protected by this
2 Act,
3 if in the course of that expression, the person in-
4 volved does not purposefully provide information
5 known to be false to any public school or educational
6 agency or other governmental entity regarding con-
7 duct made unlawful by this Act, or conduct believed
8 to be made unlawful by this Act, or conduct that
9 could be believed to become unlawful under this Act
10 if allowed to continue.

11 **SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**
12 **PORT TO CONGRESSIONAL COMMITTEES.**

13 (a) REQUIREMENTS.—Each Federal department and
14 agency which is empowered to extend Federal financial as-
15 sistance to any education program or activity, by way of
16 grant, loan, or contract other than a contract of insurance
17 or guaranty, is authorized and directed to effectuate the
18 provisions of section 4 with respect to such program or
19 activity by issuing rules, regulations, or orders of general
20 applicability which shall be consistent with achievement of
21 the objectives of the statute authorizing the financial as-
22 sistance in connection with which the action is taken. No
23 such rule, regulation, or order shall become effective un-
24 less and until approved by the President.

1 (b) ENFORCEMENT.—Compliance with any require-
2 ment adopted pursuant to this section may be effected—

3 (1) by the termination of or refusal to grant or
4 to continue assistance under such program or activ-
5 ity to any recipient as to whom there has been an
6 express finding on the record, after opportunity for
7 hearing, of a failure to comply with such require-
8 ment, but such termination or refusal shall be lim-
9 ited to the particular political entity, or part thereof,
10 or other recipient as to whom such a finding has
11 been made, and shall be limited in its effect to the
12 particular program, or part thereof, in which such
13 noncompliance has been so found; or

14 (2) by any other means authorized by law,
15 except that no such action shall be taken until the depart-
16 ment or agency concerned has advised the appropriate per-
17 son or persons of the failure to comply with the require-
18 ment and has determined that compliance cannot be se-
19 cured by voluntary means.

20 (c) REPORTS.—In the case of any action terminating,
21 or refusing to grant or continue, assistance because of fail-
22 ure to comply with a requirement imposed pursuant to this
23 section, the head of the Federal department or agency
24 shall file with the committees of the House of Representa-
25 tives and Senate having legislative jurisdiction over the

1 program or activity involved a full written report of the
2 circumstances and the grounds for such action. No such
3 action shall become effective until 30 days have elapsed
4 after the filing of such report.

5 **SEC. 6. PRIVATE CAUSE OF ACTION.**

6 (a) PRIVATE CAUSE OF ACTION.—Subject to sub-
7 section (c), and consistent with the cause of action recog-
8 nized under title VI of the Civil Rights Act of 1964 (42
9 U.S.C. 2000d et seq.) and title IX of the Education
10 Amendments of 1972 (20 U.S.C. 1681 et seq.), an ag-
11 grieved individual may bring an action in a court of com-
12 petent jurisdiction, asserting a violation of this Act. Ag-
13 grieved individuals may be awarded all appropriate relief,
14 including equitable relief, compensatory damages, and
15 costs of the action.

16 (b) RULE OF CONSTRUCTION.—This section shall not
17 be construed to preclude an aggrieved individual from ob-
18 taining remedies under any other provision of law or to
19 require such individual to exhaust any administrative com-
20 plaint process or notice of claim requirement before seek-
21 ing redress under this section.

22 (c) STATUTE OF LIMITATIONS.—For actions brought
23 pursuant to this section, the statute of limitations period
24 shall be determined in accordance with section 1658(a) of
25 title 28, United States Code. The tolling of any such limi-

1 tations period shall be determined in accordance with the
2 law governing actions under section 1979 of the Revised
3 Statutes (42 U.S.C. 1983) in the State in which the action
4 is brought.

5 **SEC. 7. CAUSE OF ACTION BY THE ATTORNEY GENERAL.**

6 The Attorney General is authorized to institute for
7 or in the name of the United States a civil action for a
8 violation of this Act in any appropriate district court of
9 the United States against such parties and for such relief
10 as may be appropriate, including equitable relief and com-
11 pensatory damages. Whenever a civil action is instituted
12 for a violation of this Act, the Attorney General may inter-
13 vene in such action upon timely application and shall be
14 entitled to the same relief as if the Attorney General had
15 instituted the action. Nothing in this Act shall adversely
16 affect the right of any person to sue or obtain relief in
17 any court for any activity that violates this Act, including
18 regulations promulgated pursuant to this Act.

19 **SEC. 8. STATE IMMUNITY.**

20 (a) STATE IMMUNITY.—A State shall not be immune
21 under the 11th Amendment to the Constitution of the
22 United States from suit in Federal court for a violation
23 of this Act.

24 (b) WAIVER.—A State's receipt or use of Federal fi-
25 nancial assistance for any program or activity of a State

1 shall constitute a waiver of sovereign immunity, under the
2 11th Amendment or otherwise, to a suit brought by an
3 aggrieved individual for a violation of section 4.

4 (c) REMEDIES.—In a suit against a State for a viola-
5 tion of this Act, remedies (including remedies both at law
6 and in equity) are available for such a violation to the
7 same extent as such remedies are available for such a vio-
8 lation in the suit against any public or private entity other
9 than a State.

10 **SEC. 9. ATTORNEY'S FEES.**

11 Section 722(b) of the Revised Statutes (42 U.S.C.
12 1988(b)) is amended by inserting “the Student Non-Dis-
13 crimination Act of 2015,” after “Religious Land Use and
14 Institutionalized Persons Act of 2000,”.

15 **SEC. 10. EFFECT ON OTHER LAWS.**

16 (a) FEDERAL AND STATE NONDISCRIMINATION
17 LAWS.—Nothing in this Act shall be construed to pre-
18 empt, invalidate, or limit rights, remedies, procedures, or
19 legal standards available to victims of discrimination or
20 retaliation, under any other Federal law or law of a State
21 or political subdivision of a State, including titles IV and
22 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000e et
23 seq., 2000d et seq.), title IX of the Education Amend-
24 ments of 1972 (20 U.S.C. 1681 et seq.), section 504 of
25 the Rehabilitation Act of 1973 (29 U.S.C. 794), the Amer-

1 icans with Disabilities Act of 1990 (42 U.S.C. 12101 et
2 seq.), or section 1979 of the Revised Statutes (42 U.S.C.
3 1983). The obligations imposed by this Act are in addition
4 to those imposed by titles IV and VI of the Civil Rights
5 Act of 1964 (42 U.S.C. 2000c et seq., 2000d et seq.), title
6 IX of the Education Amendments of 1972 (20 U.S.C.
7 1681 et seq.), section 504 of the Rehabilitation Act of
8 1973 (29 U.S.C. 794), the Americans with Disabilities Act
9 of 1990 (42 U.S.C. 12101 et seq.), and section 1979 of
10 the Revised Statutes (42 U.S.C. 1983).

11 (b) **FREE SPEECH AND EXPRESSION LAWS AND RE-**
12 **LIGIOUS STUDENT GROUPS.**—Nothing in this Act shall be
13 construed to alter legal standards regarding, or affect the
14 rights available to individuals or groups under, other Fed-
15 eral laws that establish protections for freedom of speech
16 and expression, such as legal standards and rights avail-
17 able to religious and other student groups under the First
18 Amendment and the Equal Access Act (20 U.S.C. 4071
19 et seq.).

20 **SEC. 11. SEVERABILITY.**

21 If any provision of this Act, or any application of such
22 provision to any person or circumstance, is held to be un-
23 constitutional, the remainder of this Act, and the applica-
24 tion of the provision to any other person or circumstance
25 shall not be impacted.

1 **SEC. 12. EFFECTIVE DATE.**

2 This Act shall take effect 60 days after the date of
3 enactment of this Act and shall not apply to conduct oc-
4 ccurring before the effective date of this Act.

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