

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

**DREW ADAMS, a minor, by and through
his next friend and mother, ERICA
ADAMS KASPER,**

Plaintiff,

v.

Case No.: 3:17-cv-00739-TJC-JBT

**THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,**

Defendants.

DEFENDANT’S MOTION FOR JUDICIAL NOTICE

Defendant, **THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA**

(“Defendant”), by and through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 201, hereby request this honorable Court to take judicial notice of certain documents, and in support states as follows:

1. On May 13, 2016, the U.S. Department of Education (“DOE”) and Department of Justice (“DOJ”) jointly released a statement of guidance and best practices (“Joint Guidance”) explaining how federal laws which prohibit discrimination based on sex with regard to transgender students. Included with the joint guidance was a statement that schools must allow transgender students to participate in and access sex-segregated facilities. See Exhibit A.

2. On February 22, 2017, DOE and DOJ withdrew the Joint Guidance and a prior guidance, noting that it is the role of the States and school districts to create education policy. See Exhibit B.

3. On December 15, 2014, the former U.S. Attorney General issued a memorandum stating that Title VII of the Civil Rights Act of 1964's ("Title VII") prohibition of sex discrimination encompasses gender identity. See Exhibit C.

4. On October 4, 2017, the acting U.S. Attorney General issued a memorandum declaring that Title VII's prohibition on sex discrimination does not, *per se*, include gender identity and withdrew the former U.S. Attorney General's December 15, 2014 memorandum. See Exhibit D.

5. The Joint Guidance, its withdrawal letter, and the Attorney General Memoranda are published on DOE's or DOJ's websites.¹

6. Additionally, several bills have been introduced and proposed over the last several years making a distinction between sex and gender identity. These bills include S.1006 "Equality Act" (Exhibit E); S.1858 "Equality Act" (Exhibit F); and S.439 "Student Non-Discrimination Act of 2015" (Exhibit G).

7. All of these bills are published on the U.S. Congress's Website.²

¹ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>
<https://www.justice.gov/crt/guidance-and-resources>
[https://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex-](https://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex)
<https://www.justice.gov/ag/page/file/1006981/download>

² <https://www.congress.gov/bill/115th-congress/senate-bill/1006/text?q=%7B%22search%22%3A%5B%22%5C%22Title+VII%5C%22+AND+%5C%22gender+identity%5C%22%22%5D%7D&r=1%20https://www.congress.gov/bill/115th-congress/house-bill/2282/text?q=%7B%22search%22%3A%5B%22%5C%22Title+VII%5C%22+AND+%5C%22gender+identity%5C%22%22%5D%7D&r=2>
<https://www.congress.gov/bill/114th-congress/senate-bill/1858/text?q=%7B%22search%22%3A%5B%22114hr3185%22%5D%7D&r=2https://www.congress.gov/bill/114th-congress/house-bill/3185/text?q=%7B%22search%22%3A%5B%22114hr3185%22%5D%7D&r=3>
<https://www.congress.gov/bill/114th-congress/senate-bill/439/text?q=%7B%22search%22%3A%5B%22114s439%22%5D%7D&r=1https://www.congress.gov/bill/114th-congress/house-bill/846/text?q=%7B%22search%22%3A%5B%22114s439%22%5D%7D&r=2>

8. Counsel for Plaintiff has been contacted regarding this motion and does not oppose the Court taking judicial notice of **Exhibits A, B, C and D**. Plaintiff does oppose the Court taking judicial notice of **Exhibits E, F, and G**.

MEMORANDUM OF LAW

A court may take judicial notice of a fact if it can be accurately and readily determined from sources whose accuracy cannot be reasonable questioned. Stanifer v. Corin USA Ltd., Inc., 2014 WL 5823319, *3 (M.D. Fla. Nov. 10, 2014). Facts and documents found on government websites are the proper subjects for judicial notice. See Sec. of Labor v. American Bronze Foundry, Inc., 2013 WL 5720146, *3, fn. 4 (M.D. Fla. Oct. 21, 2013); Setai, Hotel Acquisition, LLC v. Miami Beach Luxury Rentals, Inc., 2017 WL 3503371, *7 (S.D. Fla. Aug. 15, 2017); Turbyfill v. Scottsdale Indemnity Co., 2016 WL 741657, *2 (N.D. Fla. Feb. 24, 2016); Paralyzed Veterans of America v. McPherson, 2008 WL 4183981, *5 (N.D. Cal. Sept. 9, 2008).

Accordingly, because the Joint Guidance, its withdrawal letter, the Attorney General Memoranda, and the proposed bills are published on government websites, they are proper subjects for judicial notice.

WHEREFORE, Defendant respectfully requests that the Court enter an order taking judicial notice of the May 13, 2016 DOE and DOJ Joint Guidance letter and the February 22, 2017 DOE and DOJ withdrawal of that Joint Guidance, the December 15, 2014 U.S. Attorney General Memorandum, and the October 4, 2017 U.S. Attorney General Memorandum, and the proposed bills titled S.1006 “Equality Act”; S.1858 “Equality Act”; and S.439 “Student Non-Discrimination Act of 2015” attached hereto as **Exhibits A, B, C, D, E, F, & G**.

Dated this 29th day of November 2017.

Respectfully submitted,

/s/ Kevin C. Kostelnik

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 29th day of November, 2017, a true and correct copy of the foregoing was electronically filed in the U.S. District Court, Middle District of Florida, using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Kevin C. Kostelnik

KEVIN C. KOSTELNIK

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 3.01(g), I hereby certify that on November 29, 2017, Defendant's Counsel conferred with Plaintiff's counsel. Plaintiff's counsel indicated that they do not oppose the Court taking judicial notice of **Exhibits A, B, C and D**. Plaintiff does oppose the Court taking judicial notice of **Exhibits E, F, and G**.

/s/ Kevin C. Kostelnik

KEVIN C. KOSTELNIK



U.S. Department of Justice
Civil Rights Division

Archived Information



U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter on Transgender Students Notice of Language Assistance

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語，或者使用英語有困難，您可以要求獲得向大眾提供的語言協助服務，幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊，請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線：1-800-877-8339)，或電郵：Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahhirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na inpormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.¹ This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.² This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at ocr@ed.gov or 800-421-3481 (TDD 800-877-8339); or DOJ at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.³

Terminology

- Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.
- Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

Compliance with Title IX

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.⁴ The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.⁵

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.⁶ Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),⁷ requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.⁸

1. Safe and Nondiscriminatory Environment

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.⁹ If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.¹⁰

2. Identification Documents, Names, and Pronouns

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.¹¹

3. Sex-Segregated Activities and Facilities

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.¹² When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.¹³

- Restrooms and Locker Rooms.** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.¹⁴ A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.¹⁵
- Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.¹⁶ A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.¹⁷ Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.¹⁸
- Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.¹⁹ When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.
- Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.²⁰ Those schools are therefore permitted under Title IX to set their own

sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities.²¹ Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.
- **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex.²² But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.²³
- **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).²⁴

4. Privacy and Education Records

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.²⁵ Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).²⁶ A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.²⁷ Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

violate FERPA and interfere with transgender students’ right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information.** Under FERPA’s implementing regulations, a school may disclose appropriately designated directory information from a student’s education record if disclosure would not generally be considered harmful or an invasion of privacy.²⁸ Directory information may include a student’s name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.²⁹ School officials may not designate students’ sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.³⁰ A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student’s directory information.³¹

- **Amendment or Correction of Education Records.** A school may receive requests to correct a student’s education records to make them consistent with the student’s gender identity. Updating a transgender student’s education records to reflect the student’s gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.
 - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student’s education records that is inaccurate, misleading, or in violation of the student’s privacy rights.³² If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor’s comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.³³
 - Under Title IX, a school must respond to a request to amend information related to a student’s transgender status consistent with its general practices for amending other students’ records.³⁴ If a student or parent complains about the school’s handling of such a request, the school must promptly and equitably resolve the complaint under the school’s Title IX grievance procedures.³⁵

* * *

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

/s/

Vanita Gupta
Principal Deputy Assistant Attorney General for Civil Rights
U.S. Department of Justice

¹ 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

² Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf.

³ ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), www.ed.gov/oese/osh/emer gingpractices.pdf. OCR also posts many of its resolution agreements in cases involving transgender students online at www.ed.gov/ocr/lgbt.html. While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

⁴ 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED’s Title IX regulations. DOJ has also promulgated Title IX regulations. See 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. See 34 C.F.R. § 106.6(b).

⁵ See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at *8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep’t of Justice*, Appeal No. 012012082 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). See also U.S. Dep’t of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf; USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf; DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf; USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

⁶ See *Lusardi v. Dep’t of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp’t Opportunity Comm’n Apr. 1, 2015) (“An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual’s gender identity.”).

⁷ See *G.G.*, 2016 WL 1567467, at *1 n.1 (noting that medical authorities “do not permit sex reassignment surgery for persons who are under the legal age of majority”).

⁸ 34 C.F.R. § 106.31(b)(4); see *G.G.*, 2016 WL 1567467, at *8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman “merely [to be] present in the women’s faculty restroom” created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant’s proffered justification that “other women might object to [the plaintiff]’s restroom use” was “wholly irrelevant”). See also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that “mere negative attitudes, or fear . . . are not permissible bases for” government action).

⁹ See, e.g., Resolution Agreement, *In re Downey Unified Sch. Dist., CA*, OCR Case No. 09-12-1095, (Oct. 8, 2014), www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012), www.ed.gov/ocr/docs/investigations/05115901-d.pdf (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist., CA*, OCR Case No. 09-11-1031 (June 30, 2011), www.ed.gov/ocr/docs/investigations/09111031-b.pdf (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). See also *Lusardi*, Appeal No. 0120133395, at *15 (“Persistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment”).

¹⁰ See, e.g., OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), www.ed.gov/ocr/docs/shguide.pdf; OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), www.ed.gov/ocr/letters/colleague-201010.pdf; OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), www.ed.gov/ocr/letters/colleague-201104.pdf; OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

¹¹ See, e.g., Resolution Agreement, *In re Cent. Piedmont Cmty. Coll., NC*, OCR Case No. 11-14-2265 (Aug. 13, 2015), www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf (agreement to use a transgender student’s preferred name and gender and change the student’s official record to reflect a name change).

¹² 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

¹³ See 34 C.F.R. § 106.31.

¹⁴ 34 C.F.R. § 106.33.

¹⁵ See, e.g., Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf (agreement to provide any student who requests additional privacy “access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.”).

¹⁶ 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

¹⁷ 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school’s obligations regarding transgender athletes apply with equal force to the association.

¹⁸ The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes 2*, 30-31 (2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may “be unfair and too complicated for [the high school] level of competition.” *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

¹⁹ 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

²⁰ 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a “substantially

equal single-sex school or coeducational school”).

²¹ 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

²² 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

²³ See, e.g., Resolution Agreement, *In re Arcadia Unified Sch. Dist., CA*, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf (agreement to provide access to single-sex overnight events consistent with students’ gender identity, but allowing students to request access to private facilities).

²⁴ See 34 C.F.R. §§ 106.31(a), 106.31(b)(4). See also, *In re Downey Unified Sch. Dist., CA*, *supra* n. 9; *In re Cent. Piedmont Cmty. Coll., NC*, *supra* n. 11.

²⁵ 34 C.F.R. § 106.31(b)(7).

²⁶ 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED’s Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at www.ed.gov/fpc.

²⁷ 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

²⁸ 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

²⁹ 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

³⁰ Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), www.ed.gov/policy/gen/guid/fpc/doc/censuslettertohighered091609.pdf.

³¹ 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3, 99.37(a)(3).

³² 34 C.F.R. § 99.20.

³³ 34 C.F.R. §§ 99.20-99.22.

³⁴ See 34 C.F.R. § 106.31(b)(4).

³⁵ 34 C.F.R. § 106.8(b).



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter
Notice of Language Assistance

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

February 22, 2017

Dear Colleague:

The purpose of this guidance is to inform you that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance reflected in:

- Letter to Emily Prince from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights at the Department of Education dated January 7, 2015; and
- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and the Department of Education dated May 13, 2016.

These guidance documents take the position that the prohibitions on discrimination “on the basis of sex” in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulations, see, e.g., 34 C.F.R. § 106.33, require access to sex-segregated facilities based on gender identity. These guidance documents do not, however, contain extensive legal analysis or explain how the position is consistent with the express language of Title IX, nor did they undergo any formal public process.

This interpretation has given rise to significant litigation regarding school restrooms and locker rooms. The U.S. Court of Appeals for the Fourth Circuit concluded that the term “sex” in the regulations is ambiguous and deferred to what the court characterized as the “novel” interpretation advanced in the guidance. By contrast, a federal district court in Texas held that the term “sex” unambiguously refers to biological sex and that, in any event, the guidance was “legislative and substantive” and thus formal rulemaking should have occurred prior to the adoption of any such policy. In August of 2016, the Texas court preliminarily enjoined enforcement of the interpretation, and that nationwide injunction has not been overturned.

In addition, the Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

In these circumstances, the Department of Education and the Department of Justice have decided to withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them.

Dear Colleague Letter

Page 2 of 2

Please note that this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment. The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms. The Department of Education and the Department of Justice are committed to the application of Title IX and other federal laws to ensure such protection.

This guidance does not add requirements to applicable law. If you have questions or are interested in commenting on this letter, please contact the Department of Education at ocr@ed.gov or 800-421-3481 (TDD: 800-877-8339); or the Department of Justice at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Sincerely,

/s/

Sandra Battle
Acting Assistant Secretary for Civil Rights
U.S. Department of Education

/s/

T.E. Wheeler, II
Acting Assistant Attorney General for Civil Rights
U.S. Department of Justice



Office of the Attorney General
Washington, D. C. 20530

December 15, 2014

MEMORANDUM

TO: UNITED STATES ATTORNEYS
HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL 

SUBJECT: Treatment of Transgender Employment Discrimination Claims
Under Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 makes it unlawful for employers to discriminate in the employment of an individual “because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a) (prohibiting discrimination by private employers and by state and local governments); 42 U.S.C. § 2000e-16(a) (providing that personnel actions by federal agencies “shall be made free from any discrimination based on . . . sex”). Title VII’s prohibition of sex discrimination is a strong and vital principle that underlies the integrity of our workforce. In a variety of judicial and administrative contexts, however, questions have arisen concerning the appropriate legal standard for establishing claims of gender identity discrimination, including discrimination claims raised by transgender employees.¹

Many courts have recognized that gender identity discrimination claims may be established under a “sex-stereotyping” theory. Following the Supreme Court’s decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), courts have interpreted Title VII’s prohibition of discrimination because of “sex” as barring discrimination based on a perceived failure to conform to socially constructed characteristics of males and females. *See, e.g., Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *see also Glenn v. Bromby*, 663 F.3d 1312 (11th Cir. 2011). But courts have reached varying conclusions about whether discrimination based on gender identity in and of itself—including transgender status—constitutes discrimination based on sex. *Compare Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008), with *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2005).

The federal government’s approach to this issue has also evolved over time. In 2006, the Department stated in litigation that Title VII’s prohibition of discrimination based on sex did not cover discrimination based on transgender status or gender identity *per se*; the district court rejected that position. *See Schroer*, 577 F. Supp. 2d at 293. Subsequently, in 2011, the Office of

¹ Guidance from the Office of Personnel Management states that “[t]ransgender individuals are people with a gender identity that is different from the sex assigned to them at birth,” and defines “gender identity” as an individual’s “internal sense of being male or female.” *See* <http://www.opm.gov/diversity/Transgender/Guidance.asp>.

Personnel Management issued guidance announcing that the federal government's policy of providing a workplace free of discrimination based on sex includes a prohibition against discrimination based on gender identity. In 2012, the Equal Employment Opportunity Commission ruled that discrimination on the basis of gender identity is discrimination on the basis of sex. *Macy v. Holder*, Appeal No. 0120120821 (EEOC April 20, 2012). More recently, the President announced that discrimination based on gender identity is prohibited for purposes of federal employment and government contracting. See Executive Order 13672 (July 21, 2014); see also U.S. Dep't of Labor Directive 2014-02 (August 19, 2014).

After considering the text of Title VII, the relevant Supreme Court case law interpreting the statute, and the developing jurisprudence in this area, I have determined that the best reading of Title VII's prohibition of sex discrimination is that it encompasses discrimination based on gender identity, including transgender status. The most straightforward reading of Title VII is that discrimination "because of . . . sex" includes discrimination because an employee's gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex. As the Court explained in *Price Waterhouse*, by using "the simple words 'because of,' . . . Congress meant to obligate" a Title VII plaintiff to prove only "that the employer relied upon sex-based considerations in coming to its decision." 490 U.S. at 241-242. It follows that, as a matter of plain meaning, Title VII's prohibition against discrimination "because of . . . sex" encompasses discrimination founded on sex-based considerations, including discrimination based on an employee's transitioning to, or identifying as, a different sex altogether. Although Congress may not have had such claims in mind when it enacted Title VII, the Supreme Court has made clear that Title VII must be interpreted according to its plain text, noting that "statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 79 (1998).

For these reasons, the Department will no longer assert that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination).² This memorandum is not intended to otherwise prescribe the course of litigation or defenses that should be raised in any particular employment discrimination case. The application of Title VII to any given case will necessarily turn on the specific facts at hand. My hope, however, is that this clarification of the Department's position will foster consistent treatment of claimants throughout the government, in furtherance of this Department's commitment to fair and impartial justice for all Americans.

If you have questions about this memorandum or its application in a case, please contact your Civil Chief or your Component's Front Office.

² "Sex-stereotyping" remains an available theory under which to bring a Title VII claim, including a claim by a transgender individual, in cases where the evidence supports that theory.



Office of the Attorney General
Washington, D. C. 20530

October 4, 2017

MEMORANDUM

TO: UNITED STATES ATTORNEYS
HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL 

SUBJECT: Revised Treatment of Transgender Employment Discrimination Claims
Under Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 makes it unlawful for employers to discriminate in the employment of an individual “because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a) (prohibiting discrimination by private employers and by state and local governments); 42 U.S.C. § 2000e-16(a) (providing that personnel actions by federal agencies “shall be made free from any discrimination based on . . . sex”). Title VII’s prohibition of sex discrimination is a strong and vital principle that underlies the integrity of our workforce.

The question of whether Title VII’s prohibition on sex discrimination encompasses discrimination based on gender identity *per se*, including discrimination against transgender individuals, arises in a variety of contexts. In a December 15, 2014, memorandum, Attorney General Holder concluded that Title VII does encompass such discrimination, based on his view that Title VII prohibits employers from taking into account “sex-based considerations.” Memo. at 2; *see also id.* at 1 n.1 (defining “gender identity” and “transgender individuals”).

Although federal law, including Title VII, provides various protections to transgender individuals, Title VII does not prohibit discrimination based on gender identity *per se*. This is a conclusion of law, not policy. The sole issue addressed in this memorandum is what conduct Title VII prohibits by its terms, not what conduct should be prohibited by statute, regulation, or employer action. As a law enforcement agency, the Department of Justice must interpret Title VII as written by Congress.

Title VII expressly prohibits discrimination “because of . . . sex” and several other protected traits, but it does not refer to gender identity. “Sex” is ordinarily defined to mean biologically male or female. *See, e.g., Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1221-22 (10th Cir. 2007); *Hively v. Ivy Tech Cmty. Coll.*, 853 F.3d 339, 362 (7th Cir. 2017) (en banc) (Sykes, J., dissenting) (citing dictionaries). Congress has confirmed this ordinary meaning by expressly prohibiting, in several other statutes, “gender identity” discrimination, which Congress lists in addition to, rather than within, prohibitions on

discrimination based on “sex” or “gender.” *See, e.g.*, 18 U.S.C. § 249(a)(2); 42 U.S.C. § 13925(b)(13)(A). Furthermore, the Supreme Court has explained that “[t]he critical issue, Title VII’s text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment [or other employment actions] to which members of the other sex are not exposed.” *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998). Although Title VII bars “sex stereotypes” insofar as that particular sort of “sex-based consideration[]” causes “disparate treatment of men and women,” *Price Waterhouse v. Hopkins*, 490 U.S. 228, 242, 251 (1989) (plurality op.), Title VII is not properly construed to proscribe employment practices (such as sex-specific bathrooms) that take account of the sex of employees but do not impose different burdens on similarly situated members of each sex, *see, e.g., Jespersen v. Harrah’s Operating Co., Inc.*, 444 F.3d 1104, 1109-10 (9th Cir. 2006) (en banc).

Accordingly, Title VII’s prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity *per se*, including transgender status. Therefore, as of the date of this memorandum, which hereby withdraws the December 15, 2014, memorandum, the Department of Justice will take that position in all pending and future matters (except where controlling lower-court precedent dictates otherwise, in which event the issue should be preserved for potential further review).

The Justice Department must and will continue to affirm the dignity of all people, including transgender individuals. Nothing in this memorandum should be construed to condone mistreatment on the basis of gender identity, or to express a policy view on whether Congress should amend Title VII to provide different or additional protections. Nor does this memorandum remove or reduce the protections against discrimination on the basis of sex that Congress has provided all individuals, including transgender individuals, under Title VII. In addition, the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act and the Violence Against Women Reauthorization Act prohibit gender identity discrimination along with other types of discrimination in certain contexts. 18 U.S.C. § 249(a)(2); 42 U.S.C. § 13925(b)(13)(A). The Department of Justice has vigorously enforced such laws, and will continue to do so, on behalf of all Americans, including transgender Americans.

If you have questions about this memorandum or its application in a case, please contact your Civil Chief or your Component’s Front Office.



115TH CONGRESS
1ST SESSION

S. 1006

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2017

Mr. MERKLEY (for himself, Ms. BALDWIN, Mr. BOOKER, Mr. BENNET, Mr. BLUMENTHAL, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HASSAN, Mr. HEINRICH, Ms. HEITKAMP, Ms. HIRONO, Mr. KAINE, Mr. KING, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mrs. McCASKILL, Mr. MENENDEZ, Mr. MURPHY, Mrs. MURRAY, Mr. NELSON, Mr. PETERS, Mr. REED, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Mrs. SILLABEE, Ms. STABENOW, Mr. TESTER, Mr. UDALL, Mr. VAN HOLLEN, Mr. WARNER, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, 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 “Equality Act”.

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

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

3 (1) Discrimination can occur on the basis of the
4 sex, sexual orientation, gender identity, or preg-
5 nancy, childbirth, or a related medical condition of
6 an individual, as well as because of sex-based stereo-
7 types. Each of these factors alone can serve as the
8 basis for discrimination, and each is a form of sex
9 discrimination.

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

19 (3) Lesbian, gay, bisexual, and transgender (re-
20 ferred to as “LGBT”) people commonly experience
21 discrimination in securing access to public accom-
22 modations—including restaurants, stores, places of
23 or establishments that provide entertainment, and
24 transportation. Forms of discrimination include the
25 exclusion and denial of entry, unequal or unfair
26 treatment, harassment, and violence. This discrimi-

1 nation prevents the full participation of LGBT peo-
2 ple in society and disrupts the free flow of com-
3 merce.

4 (4) Women also face discrimination, in estab-
5 lishments such as stores and restaurants, and places
6 or establishments that provide other goods or serv-
7 ices, such as entertainment or transportation, in-
8 cluding sexual harassment, differential pricing, and
9 denial of services because they are pregnant or
10 breastfeeding.

11 (5) Regular and ongoing discrimination against
12 LGBT people, as well as women, in accessing public
13 accommodations contributes to negative social and
14 economic outcomes.

15 (6) The discredited practice known as “conver-
16 sion therapy” is a form of discrimination that harms
17 LGBT people by undermining individuals sense of
18 self worth, increasing suicide ideation and substance
19 abuse, exacerbating family conflict, and contributing
20 to second class status.

21 (7) Both LGBT people and women face wide-
22 spread discrimination in employment and various
23 services, including by entities that receive Federal fi-
24 nancial assistance. Such discrimination—

1 (A) is particularly troubling and inappro-
2 priate for programs and services funded wholly
3 or in part by the Federal Government;

4 (B) undermines national progress toward
5 equal treatment regardless of sex, sexual ori-
6 entation, or gender identity; and

7 (C) is inconsistent with the constitutional
8 principle of equal protection under the Four-
9 teenth Amendment of the Constitution of the
10 United States.

11 (8) Workers who are LGBT, or are perceived to
12 be LGBT, have been subjected to a history and pat-
13 tern of persistent, widespread, and pervasive dis-
14 crimination on the bases of sexual orientation and
15 gender identity by private sector employers and Fed-
16 eral, State, and local government employers.

17 (9) Numerous provisions of Federal law ex-
18 pressly prohibit discrimination on the basis of sex,
19 and Federal agencies and courts have correctly in-
20 terpreted these prohibitions on sex discrimination to
21 include discrimination based on sexual orientation,
22 gender identity, and sex stereotypes. In particular,
23 the Equal Employment Opportunity Commission
24 correctly interpreted title VII of the Civil Rights Act

1 of 1964 in *Macy v. Holder*, *Baldwin v. Foxx*, and
2 *Lusardi v. McHugh*.

3 (10) The absence of explicit prohibitions of dis-
4 crimination on the basis of sexual orientation and
5 gender identity under Federal statutory law, as well
6 as the existence of legislative proposals that would
7 have provided such explicit prohibitions, has led
8 some courts to conclude incorrectly that current
9 Federal laws prohibiting sex discrimination do not
10 prohibit discrimination on the basis of sexual ori-
11 entation and gender identity. It has also created un-
12 certainty for employers and other entities covered by
13 Federal nondiscrimination laws and caused unneces-
14 sary hardships for LGBT individuals.

15 (11) LGBT people often face discrimination
16 when seeking to rent or purchase housing, as well as
17 in every other aspect of obtaining and maintaining
18 housing. LGBT people in same-sex relationships are
19 often discriminated against when two names associ-
20 ated with one gender appear on a housing applica-
21 tion, and transgender people often encounter dis-
22 crimination when credit checks or inquiries reveal a
23 former name.

24 (12) National surveys, including a study com-
25 missioned by the Department of Housing and Urban

1 Development, show that housing discrimination
2 against LGBT people is very prevalent. For in-
3 stance, when same-sex couples inquire about housing
4 that is available for rent, they are less likely to re-
5 ceive positive responses from landlords. According to
6 other studies, transgender people have half the
7 homeownership rate of non-transgender people and
8 about 1 in 5 transgender people experience home-
9 lessness.

10 (13) As a result of the absence of explicit prohi-
11 bitions against discrimination on the basis of sexual
12 orientation and gender identity, credit applicants
13 who are LGBT, or perceived to be LGBT, have un-
14 equal opportunities to establish credit. LGBT people
15 can experience being denied a mortgage, credit card,
16 student loan, or many other types of credit simply
17 because of their sexual orientation or gender iden-
18 tity.

19 (14) Numerous studies demonstrate that LGBT
20 people, especially transgender people and women, are
21 economically disadvantaged and at a higher risk for
22 poverty compared with other groups of people.

23 (15) The right to an impartial jury of one's
24 peers and the reciprocal right to jury service are
25 fundamental to the free and democratic system of

1 justice in the United States and are based in the
2 Bill of Rights. There is, however, an unfortunate
3 and long-documented history in the United States of
4 attorneys discriminating against LGBT individuals,
5 or those perceived to be LGBT, in jury selection.
6 Failure to bar peremptory challenges based on the
7 actual or perceived sexual orientation or gender
8 identity of an individual not only erodes a funda-
9 mental right, duty, and obligation of being a citizen
10 of the United States, but also unfairly creates a sec-
11 ond class of citizenship for LGBT victims, witnesses,
12 plaintiffs, and defendants.

13 (b) PURPOSE.—It is the purpose of this Act to ex-
14 pand as well as clarify, confirm and create greater consist-
15 eny in the protections against discrimination on the basis
16 of all covered characteristics and to provide guidance and
17 notice to individuals, organizations, corporations, and
18 agencies regarding their obligations under the law.

19 **SEC. 3. PUBLIC ACCOMMODATIONS.**

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

23 (1) in subsection (a), by inserting “sex, sexual
24 orientation, gender identity,” before “or national ori-
25 gin”; and

1 (2) in subsection (b)—

2 (A) in paragraph (3), by striking “sta-
3 dium” and all that follows and inserting “sta-
4 dium or other place of or establishment that
5 provides exhibition, entertainment, recreation,
6 exercise, amusement, gathering, or display;”;

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

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

11 “(4) any establishment that provides a good,
12 service, or program, including a store, shopping cen-
13 ter, online retailer or service provider, salon, bank,
14 gas station, food bank, service or care center, shel-
15 ter, travel agency, or funeral parlor, or establish-
16 ment that provides health care, accounting, or legal
17 services;

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

22 (b) PROHIBITION ON DISCRIMINATION OR SEGREGA-
23 TION UNDER LAW.—Section 202 of such Act (42 U.S.C.
24 2000a–1) is amended by inserting “sex, sexual orienta-
25 tion, gender identity,” before “or national origin”.

1 (e) RULE OF CONSTRUCTION.—Title II of such Act
2 (42 U.S.C. 2000a et seq.) is amended by adding at the
3 end the following:

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

5 “A reference in this title to an establishment—

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

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

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

12 Section 301(a) of the Civil Rights Act of 1964 (42
13 U.S.C. 2000b(a)) is amended by inserting “sex, sexual ori-
14 entation, gender identity,” before “or national origin”.

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

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

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

24 (c) CLASSIFICATION AND ASSIGNMENT.—Section 410
25 of such Act (42 U.S.C. 2000e–9) is amended by inserting

1 “, sexual orientation, gender identity,” before “or national
2 origin”.

3 **SEC. 6. FEDERAL FUNDING.**

4 Section 601 of the Civil Rights Act of 1964 (42
5 U.S.C. 2000d) is amended by inserting “sex, sexual ori-
6 entation, gender identity,” before “or national origin,”.

7 **SEC. 7. EMPLOYMENT.**

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

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

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

16 (b) **UNLAWFUL EMPLOYMENT PRACTICES.**—Section
17 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–
18 2) is amended—

19 (1) in the section header, by striking “SEX,”
20 and inserting “SEX, SEXUAL ORIENTATION, GENDER
21 IDENTITY,”;

22 (2) except in subsection (e), by striking “sex,”
23 each place it appears and inserting “sex, sexual ori-
24 entation, gender identity,”;

1 (3) in subsection (e)(1), by striking “enter-
2 prise,” and inserting “enterprise, if, in a situation in
3 which sex is a bona fide occupational qualification,
4 individuals are recognized as qualified in accordance
5 with their gender identity,”; and

6 (4) in subsection (h), by striking “sex” the sec-
7 ond place it appears and inserting “sex, sexual ori-
8 entation, gender identity,”.

9 (c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—
10 Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.
11 2000e-3(b)) is amended—

12 (1) by striking “sex,” the first place it appears
13 and inserting “sex, sexual orientation, gender iden-
14 tity,”; and

15 (2) by striking “employment.” and inserting
16 “employment, if, in a situation in which sex is a
17 bona fide occupational qualification, individuals are
18 recognized as qualified in accordance with their gen-
19 der identity.”.

20 (d) CLAIMS.—Section 706(g)(2)(A) of the Civil
21 Rights Act of 1964 (2000e-5(g)(2)(A)) is amended by
22 striking “sex,” and inserting “sex, sexual orientation, gen-
23 der identity,”.

1 (e) EMPLOYMENT BY FEDERAL GOVERNMENT.—Sec-
2 tion 717 of the Civil Rights Act of 1964 (42 U.S.C.
3 2000c–16) is amended—

4 (1) in subsection (a), by striking “sex,” and in-
5 serting “sex, sexual orientation, gender identity,”;
6 and

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

9 (f) GOVERNMENT EMPLOYEE RIGHTS ACT OF
10 1991.—The Government Employee Rights Act of 1991
11 (42 U.S.C. 2000e–16a et seq.) is amended—

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

14 (2) in section 302(a)(1), by striking “sex,” and
15 inserting “sex, sexual orientation, gender identity,”;
16 and

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

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

19 “Sections 1101(b), 1106, and 1107 of the Civil
20 Rights Act of 1964 shall apply to this title except that
21 for purposes of that application, a reference in that section
22 1106 to ‘race, color, religion, sex, sexual orientation, gen-
23 der identity, or national origin’ shall be considered to be
24 a reference to ‘race, color, religion, sex, sexual orientation,
25 gender identity, national origin, age, or disability’.”.

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

4 (1) in section 201(a)(1) (2 U.S.C. 1311(a)(1))
5 by inserting “sexual orientation, gender identity,”
6 before “or national origin,”; and

7 (2) by adding at the end of title II (42 U.S.C.
8 1311 et seq.) the following:

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

10 “Sections 1101(b), 1106, and 1107 of the Civil
11 Rights Act of 1964 shall apply to section 201 (and reme-
12 dial provisions of this Act related to section 201) except
13 that for purposes of that application, a reference in that
14 section 1106 to ‘race, color, religion, sex, sexual orienta-
15 tion, gender identity, or national origin’ shall be consid-
16 ered to be a reference to ‘race, color, religion, sex, sexual
17 orientation, gender identity, national origin, age, or dis-
18 ability’.”.

19 (h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter
20 23 of title 5, United States Code, is amended—

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

24 (2) in section 2302—

1 (Λ) in subsection (b)(1)(Λ), by inserting
2 “sexual orientation, gender identity,” before “or
3 national origin;”; and

4 (B) in subsection (d)(1), by inserting “sex-
5 ual orientation, gender identity,” before “or na-
6 tional origin;”; and

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

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

9 “Sections 1101(b), 1106, and 1107 of the Civil
10 Rights Act of 1964 shall apply to this chapter (and reme-
11 dial provisions of this title related to this chapter) except
12 that for purposes of that application, a reference in that
13 section 1106 to ‘race, color, religion, sex, sexual orienta-
14 tion, gender identity, or national origin’ shall be consid-
15 ered to be a reference to ‘race, color, religion, sex, sexual
16 orientation, gender identity, national origin, age, a handi-
17 capping condition, marital status, or political affiliation’.”.

18 **SEC. 8. INTERVENTION.**

19 Section 902 of the Civil Rights Act of 1964 (42
20 U.S.C. 2000h-2) is amended by inserting “, sexual ori-
21 entation, gender identity,” before “or national origin,”.

22 **SEC. 9. MISCELLANEOUS.**

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

24 (1) by redesignating sections 1101 through
25 1104 (42 U.S.C. 2000h et seq.) and sections 1105

1 and 1106 (42 U.S.C. 2000h-5, 2000h-6) as sections
2 1102 through 1105 and sections 1108 and 1109, re-
3 spectively;

4 (2) by inserting after the title heading the fol-
5 lowing:

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

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

10 “(1) RACE; COLOR; RELIGION; SEX; SEXUAL
11 ORIENTATION; GENDER IDENTITY; NATIONAL ORI-
12 GIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sex-
13 ual orientation’, ‘gender identity’, or ‘national ori-
14 gin’, used with respect to an individual, includes—

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

20 “(B) a perception or belief, even if inac-
21 curate, concerning the race, color, religion, sex,
22 sexual orientation, gender identity, or national
23 origin, respectively, of the individual.

24 “(2) GENDER IDENTITY.—The term ‘gender
25 identity’ means the gender-related identity, appear-

1 ance, mannerisms, or other gender-related character-
2 istics of an individual, regardless of the individual's
3 designated sex at birth.

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

7 “(4) SEX.—The term ‘sex’ includes—

8 “(A) a sex stereotype;

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

11 “(C) sexual orientation or gender identity.

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

15 “(b) RULES.—In a covered title referred to in sub-
16 section (a)—

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

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

1 (3) by inserting after section 1105 the fol-
2 lowing:

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

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

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

11 “(2) to limit the protection against an unlawful
12 practice on the basis of sex available under any pro-
13 vision of Federal law other than that covered title,
14 prohibiting a practice on the basis of sex.

15 “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—
16 Nothing in section 1101 or a covered title shall be con-
17 strued to limit the claims or remedies available to any indi-
18 vidual for an unlawful practice on the basis of race, color,
19 religion, sex, sexual orientation, gender identity, or na-
20 tional origin including claims brought pursuant to section
21 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983,
22 1985) or any other law, including a Federal law amended
23 by the Equality Act, regulation, or policy.

24 “(c) NO NEGATIVE INFERENCE.—Nothing in section
25 1101 or a covered title shall be construed to support any

1 inference that any Federal law prohibiting a practice on
2 the basis of sex does not prohibit discrimination on the
3 basis of pregnancy, childbirth, or a related medical condi-
4 tion, sexual orientation, gender identity, or a sex stereo-
5 type.

6 **“SEC. 1107. 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, a covered title,
10 or provide a basis for challenging the application or en-
11 forcement of a covered title.”.

12 **SEC. 10. HOUSING.**

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

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

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

20 “(q) ‘Race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-
21 tion’, ‘gender identity’, ‘handicap’, ‘familial status’, or ‘na-
22 tional origin’, used with respect to an individual, in-
23 cludes—

24 “(1) the race, color, religion, sex, sexual ori-
25 entation, gender identity, handicap, familial status,

1 or national origin, respectively, of another person
2 with whom the individual is associated or has been
3 associated; and

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

8 (2) in section 804, by inserting “sexual orienta-
9 tion, gender identity,” after “sex,” each place that
10 term appears;

11 (3) in section 805, by inserting “sexual orienta-
12 tion, gender identity,” after “sex,” each place that
13 term appears;

14 (4) in section 806, by inserting “sexual orienta-
15 tion, gender identity,” after “sex,”;

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

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

19 **“SEC. 821. RULES OF CONSTRUCTION.**

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

1 **“SEC. 822. CLAIMS.**

2 “Section 1107 of the Civil Rights Act of 1964 shall
3 apply to this title and section 901, except that for pur-
4 poses of that application, a reference in that section 1107
5 to a ‘covered title’ shall be considered a reference to ‘this
6 title and section 901’.”.

7 (b) **PREVENTION OF INTIMIDATION IN FAIR HOUS-**
8 **ING CASES.**—Section 901 of the Civil Rights Act of 1968
9 (42 U.S.C. 3631) is amended by inserting “sexual orienta-
10 tion (as such term is defined in section 802 of this Act),
11 gender identity (as such term is defined in section 802
12 of this Act),” after “sex,” each place that term appears.

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

14 (a) **PROHIBITED DISCRIMINATION.**—Section
15 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C.
16 1691(a)(1)) is amended by inserting “sexual orientation,
17 gender identity,” after “status,”.

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

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

22 (2) by inserting after subsection (e) the fol-
23 lowing:

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

1 “(g) The term ‘race’, ‘color’, ‘religion’, ‘national ori-
2 gin’, ‘sex’, ‘sexual orientation’, ‘gender identity’, ‘marital
3 status’, or ‘age’, used with respect to an individual, in-
4 cludes—

5 “(1) the race, color, religion, national origin,
6 sex, sexual orientation, gender identity, marital sta-
7 tus, or age, respectively, of another person with
8 whom the individual is associated or has been associ-
9 ated; and

10 “(2) a perception or belief, even if inaccurate,
11 concerning the race, color, religion, national origin,
12 sex, sexual orientation, gender identity, marital sta-
13 tus, or age, respectively, of the individual.”; and

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

15 “(j) Sections 1101(b) and 1106 of the Civil Rights
16 Act of 1964 shall apply to this title, except that for pur-
17 poses of that application—

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

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

24 (e) RELATION TO STATE LAWS.—Section 705(a) of
25 the Equal Credit Opportunity Act (15 U.S.C. 1691d(a))

1 is amended by inserting “, sexual orientation, gender iden-
2 tity,” after “sex”.

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

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

10 **SEC. 12. JURIES.**

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

13 (1) in section 1862, by inserting “sexual ori-
14 entation, gender identity,” after “sex,”;

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

18 (3) in section 1869—

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

21 (B) in subsection (k), by striking the pe-
22 riod at the end and inserting a semicolon; and

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

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

4 “(m) ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-
5 tion’, ‘gender identity’, ‘economic status’, or ‘national ori-
6 gin’, used with respect to an individual, includes—

7 “(1) the race, color, religion, sex, sexual ori-
8 entation, gender identity, economic status, or na-
9 tional origin, respectively, of another person with
10 whom the individual is associated or has been associ-
11 ated; and

12 “(2) a perception or belief, even if inaccurate,
13 concerning the race, color, religion, sex, sexual ori-
14 entation, gender identity, economic status, or na-
15 tional origin, respectively, of the individual.”; and

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

17 **“§ 1879. Rules of construction and claims**

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

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—

24 The table of sections for chapter 121 of title 28, United

24

- 1 States Code, is amended by adding at the end the fol-
- 2 lowing:

“1879. Rules of construction and claims.”

○



114TH CONGRESS
1ST SESSION

S. 1858

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2015

Mr. MERKLEY (for himself, Ms. BALDWIN, Mr. BOOKER, Mr. BENNET, Mr. BLUMENTHAL, Mrs. BOXER, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. COONS, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. HEINRICH, Ms. HIRONO, Mr. KAINE, Mr. KING, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mrs. MCCASKILL, Mr. MENENDEZ, Ms. MIKULSKI, Mr. MURPHY, Mrs. MURRAY, Mr. PETERS, Mr. REED, Mr. REID, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Mrs. SHAHEEN, Ms. STABENOW, Mr. UDALL, Mr. WARNER, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, 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 “Equality Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

1 (1) Discrimination can occur on the basis of the
2 sex, sexual orientation, gender identity, or preg-
3 nancy, childbirth, or a related medical condition of
4 an individual, as well as because of sex-based stereo-
5 types. Each of these factors alone can serve as the
6 basis for discrimination, and each is a form of sex
7 discrimination.

8 (2) A single instance of discrimination may
9 have more than 1 basis. For example, discrimination
10 against a married same-sex couple could be based on
11 the sex stereotype that marriage should only be be-
12 tween heterosexual couples, the sexual orientation of
13 the 2 individuals in the couple, or both. Discrimina-
14 tion against a pregnant lesbian could be based on
15 her sex, her sexual orientation, her pregnancy, or on
16 the basis of multiple factors.

17 (3) Lesbian, gay, bisexual, and transgender (re-
18 ferred to as “LGBT”) people commonly experience
19 discrimination in securing access to public accom-
20 modations—including restaurants, stores, places of
21 or establishments that provide entertainment, and
22 transportation. Forms of discrimination include the
23 exclusion and denial of entry, unequal or unfair
24 treatment, harassment, and violence. This discrimi-
25 nation prevents the full participation of LGBT peo-

1 ple in society and disrupts the free flow of com-
2 merce.

3 (4) Women also face discrimination, in estab-
4 lishments such as stores and restaurants, and places
5 or establishments that provide other goods or serv-
6 ices, such as entertainment or transportation, in-
7 cluding sexual harassment, differential pricing, and
8 denial of services because they are pregnant or
9 breastfeeding.

10 (5) Regular and ongoing discrimination against
11 LGBT people, as well as women, in accessing public
12 accommodations contributes to negative social and
13 economic outcomes.

14 (6) Both LGBT people and women face wide-
15 spread discrimination in employment and various
16 services, including by entities that receive Federal fi-
17 nancial assistance. Such discrimination—

18 (A) is particularly troubling and inappro-
19 priate for programs and services funded wholly
20 or in part by the Federal Government;

21 (B) undermines national progress toward
22 equal treatment regardless of sex, sexual ori-
23 entation, or gender identity; and

24 (C) is inconsistent with the constitutional
25 principle of equal protection under the Four-

1 teenth Amendment of the Constitution of the
2 United States.

3 (7) Workers who are LGBT, or are perceived to
4 be LGBT, have been subjected to a history and pat-
5 tern of persistent, widespread, and pervasive dis-
6 crimination on the bases of sexual orientation and
7 gender identity by private sector employers and Fed-
8 eral, State, and local government employers.

9 (8) Numerous provisions of Federal law ex-
10 pressly prohibit discrimination on the basis of sex,
11 and Federal agencies and courts have correctly in-
12 terpreted these prohibitions on sex discrimination to
13 include discrimination based on sexual orientation,
14 gender identity, and sex stereotypes. In particular,
15 the Equal Employment Opportunity Commission has
16 explicitly interpreted sex discrimination to include
17 sexual orientation and gender identity.

18 (9) The absence of explicit prohibitions of dis-
19 crimination on the basis of sexual orientation and
20 gender identity under Federal statutory law, as well
21 as some conflicting case law on how broadly sex dis-
22 crimination provisions apply, has created uncertainty
23 for employers and other entities covered by these
24 laws. This lack of clear coverage also causes unnec-
25 essary hardships for LGBT people.

1 (10) LGBT people often face discrimination
2 when seeking to rent or purchase housing, as well as
3 in every other aspect of obtaining and maintaining
4 housing. LGBT people in same-sex relationships are
5 often discriminated against when 2 names associated
6 with 1 gender appear on a housing application, and
7 transgender people often encounter discrimination
8 when credit checks or inquiries reveal a former
9 name.

10 (11) National surveys, including a study com-
11 missioned by the Department of Housing and Urban
12 Development, show that housing discrimination
13 against LGBT people is very prevalent. For in-
14 stance, when same-sex couples inquire about housing
15 that is available for rent, they are less likely to re-
16 ceive positive responses from landlords. According to
17 other studies, transgender people have half the
18 homeownership rate of non-transgender people and
19 about 1 in 5 transgender people experience home-
20 lessness.

21 (12) As a result of the absence of explicit prohi-
22 bitions against discrimination on the basis of sexual
23 orientation and gender identity, credit applicants
24 who are LGBT, or perceived to be LGBT, have un-
25 equal opportunities to establish credit. LGBT people

1 can experience being denied a mortgage, credit card,
2 student loan, or many other types of credit simply
3 because of their sexual orientation or gender iden-
4 tity.

5 (13) Numerous studies demonstrate that LGBT
6 people, especially transgender people and women, are
7 economically disadvantaged and at a higher risk for
8 poverty compared with other groups of people.

9 (14) The right to an impartial jury of one's
10 peers and the reciprocal right to jury service are
11 fundamental to the free and democratic system of
12 justice in the United States and are based in the
13 Bill of Rights. There is, however, an unfortunate
14 and long-documented history in the United States of
15 attorneys discriminating against LGBT individuals,
16 or those perceived to be LGBT, in jury selection.
17 Failure to bar peremptory challenges based on the
18 actual or perceived sexual orientation or gender
19 identity of an individual not only erodes a funda-
20 mental right, duty, and obligation of being a citizen
21 of the United States, but also unfairly creates a sec-
22 ond class of citizenship for LGBT victims, witnesses,
23 plaintiffs, and defendants.

1 **SEC. 3. PUBLIC ACCOMMODATIONS.**

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

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

8 (2) in subsection (b)—

9 (A) in paragraph (3), by striking “sta-
10 dium” and all that follows and inserting “sta-
11 dium or other place of or establishment that
12 provides exhibition, entertainment, recreation,
13 exercise, amusement, gathering, or display;”;

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

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

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

25 “(5) any train service, bus service, car service,
26 taxi service, airline service, station, depot, or other

1 place of or establishment that provides transpor-
2 tation service; and”.

3 (b) PROHIBITION ON DISCRIMINATION OR SEGREGA-
4 TION UNDER LAW.—Section 202 of such Act (42 U.S.C.
5 2000a–1) is amended by inserting “sex, sexual orienta-
6 tion, gender identity,” before “or national origin”.

7 (c) RULE OF CONSTRUCTION.—Title II of such Act
8 (42 U.S.C. 2000a et seq.) is amended by adding at the
9 end the following:

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

11 “A reference in this title to an establishment—

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

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

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

18 Section 301(a) of the Civil Rights Act of 1964 (42
19 U.S.C. 2000b(a)) is amended by inserting “sex, sexual ori-
20 entation, gender identity,” before “or national origin”.

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

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

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

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

9 **SEC. 6. FEDERAL FUNDING.**

10 Section 601 of the Civil Rights Act of 1964 (42
11 U.S.C. 2000d) is amended by inserting “sex, sexual ori-
12 entation, gender identity,” before “or national origin,”.

13 **SEC. 7. EMPLOYMENT.**

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

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

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

22 (b) UNLAWFUL EMPLOYMENT PRACTICES.—Section
23 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–
24 2) is amended—

1 (1) in the section header, by striking “SEX,”
2 and inserting “SEX, SEXUAL ORIENTATION, GENDER
3 IDENTITY,”;

4 (2) except in subsection (e), by striking “sex,”
5 each place it appears and inserting “sex, sexual ori-
6 entation, gender identity,”;

7 (3) in subsection (e)(1), by striking “enter-
8 prise,” and inserting “enterprise, if, in a situation in
9 which sex is a bona fide occupational qualification,
10 individuals are recognized as qualified in accordance
11 with their gender identity,”; and

12 (4) in subsection (h), by striking “sex” the sec-
13 ond place it appears and inserting “sex, sexual ori-
14 entation, gender identity,”.

15 (c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—
16 Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.
17 2000e-3(b)) is amended—

18 (1) by striking “sex,” the first place it appears
19 and inserting “sex, sexual orientation, gender iden-
20 tity,”; and

21 (2) by striking “employment.” and inserting
22 “employment, if, in a situation in which sex is a
23 bona fide occupational qualification, individuals are
24 recognized as qualified in accordance with their gen-
25 der identity.”.

1 (d) CLAIMS.—Section 706(g)(2)(A) of the Civil
2 Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by
3 striking “sex,” and inserting “sex, sexual orientation, gen-
4 der identity,”.

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

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

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

13 (f) GOVERNMENT EMPLOYEE RIGHTS ACT OF
14 1991.—The Government Employee Rights Act of 1991
15 (42 U.S.C. 2000e–16a et seq.) is amended—

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

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

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

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

23 “Sections 1101(b), 1106, and 1107 of the Civil
24 Rights Act of 1964 shall apply to this title except that
25 for purposes of that application, a reference in that section

1 1106 to ‘race, color, religion, sex, sexual orientation, gen-
2 der identity, or national origin’ shall be considered to be
3 a reference to ‘race, color, religion, sex, sexual orientation,
4 gender identity, national origin, age, or disability’.”.

5 (g) CONGRESSIONAL ACCOUNTABILITY ACT OF
6 1995.—The Congressional Accountability Act of 1995 (2
7 U.S.C. 1301 et seq.) is amended—

8 (1) in section 201(a)(1) (2 U.S.C. 1311(a)(1))
9 by inserting “sexual orientation, gender identity,”
10 before “or national origin,”; and

11 (2) by adding at the end of title II (42 U.S.C.
12 1311 et seq.) the following:

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

14 “Sections 1101(b), 1106, and 1107 of the Civil
15 Rights Act of 1964 shall apply to section 201 (and reme-
16 dial provisions of this Act related to section 201) except
17 that for purposes of that application, a reference in that
18 section 1106 to ‘race, color, religion, sex, sexual orienta-
19 tion, gender identity, or national origin’ shall be consid-
20 ered to be a reference to ‘race, color, religion, sex, sexual
21 orientation, gender identity, national origin, age, or dis-
22 ability’.”.

23 (h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter
24 23 of title 5, United States Code, is amended—

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

4 (2) in section 2302—

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

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

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

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

13 “Sections 1101(b), 1106, and 1107 of the Civil
14 Rights Act of 1964 shall apply to this chapter (and reme-
15 dial provisions of this title related to this chapter) except
16 that for purposes of that application, a reference in that
17 section 1106 to ‘race, color, religion, sex, sexual orienta-
18 tion, gender identity, or national origin’ shall be consid-
19 ered to be a reference to ‘race, color, religion, sex, sexual
20 orientation, gender identity, national origin, age, a handi-
21 capping condition, marital status, or political affiliation’.”.

22 **SEC. 8. INTERVENTION.**

23 Section 902 of the Civil Rights Act of 1964 (42
24 U.S.C. 2000h-2) is amended by inserting “, sexual ori-
25 entation, gender identity,” before “or national origin,”.

1 **SEC. 9. MISCELLANEOUS.**

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

3 (1) by redesignating sections 1101 through
4 1104 (42 U.S.C. 2000h et seq.) and sections 1105
5 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections
6 1102 through 1105 and sections 1108 and 1109, re-
7 spectively;

8 (2) by inserting after the title heading the fol-
9 lowing:

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

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

14 “(1) **RACE; COLOR; RELIGION; SEX; SEXUAL**
15 **ORIENTATION; GENDER IDENTITY; NATIONAL ORI-**
16 **GIN.**—The term ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sex-
17 ual orientation’, ‘gender identity’, or ‘national ori-
18 gin’, used with respect to an individual, includes—

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

24 “(B) a perception or belief, even if inac-
25 curate, concerning the race, color, religion, sex,

1 sexual orientation, gender identity, or national
2 origin, respectively, of the individual.

3 “(2) GENDER IDENTITY.—The term ‘gender
4 identity’ means the gender-related identity, appear-
5 ance, mannerisms, or other gender-related character-
6 istics of an individual, regardless of the individual’s
7 designated sex at birth.

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

11 “(4) SEX.—The term ‘sex’ includes—

12 “(A) a sex stereotype;

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

15 “(C) sexual orientation or gender identity.

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

19 “(b) RULES.—In a covered title referred to in sub-
20 section (a)—

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

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

6 (3) by inserting after section 1105 the fol-
7 lowing:

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

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

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

16 “(2) to limit the protection against an unlawful
17 practice on the basis of sex available under any pro-
18 vision of Federal law other than that covered title,
19 prohibiting a practice on the basis of sex.

20 “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—
21 Nothing in section 1101 or a covered title shall be con-
22 strued to limit the claims or remedies available to any indi-
23 vidual for an unlawful practice on the basis of race, color,
24 religion, sex, sexual orientation, gender identity, or na-
25 tional origin including claims brought pursuant to section

1 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983,
2 1985) or any other law, including a Federal law amended
3 by the Equality Act, regulation, or policy.

4 “(c) NO NEGATIVE INFERENCE.—Nothing in section
5 1101 or a covered title shall be construed to support any
6 inference that any Federal law prohibiting a practice on
7 the basis of sex does not prohibit discrimination on the
8 basis of pregnancy, childbirth, or a related medical condi-
9 tion, sexual orientation, gender identity, or a sex stereo-
10 type.

11 **“SEC. 1107. CLAIMS.**

12 “The Religious Freedom Restoration Act of 1993 (42
13 U.S.C. 2000bb et seq.) shall not provide a claim con-
14 cerning, or a defense to a claim under, a covered title,
15 or provide a basis for challenging the application or en-
16 forcement of a covered title.”.

17 **SEC. 10. HOUSING.**

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

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

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

1 “(q) ‘Race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-
2 tion’, ‘gender identity’, ‘handicap’, ‘familial status’, or ‘na-
3 tional origin’, used with respect to an individual, in-
4 cludes—

5 “(1) the race, color, religion, sex, sexual ori-
6 entation, gender identity, handicap, familial status,
7 or national origin, respectively, of another person
8 with whom the individual is associated or has been
9 associated; and

10 “(2) a perception or belief, even if inaccurate,
11 concerning the race, color, religion, sex, sexual ori-
12 entation, gender identity, handicap, familial status,
13 or national origin, respectively, of the individual.”;

14 (2) in section 804, by inserting “sexual orienta-
15 tion, gender identity,” after “sex,” each place that
16 term appears;

17 (3) in section 805, by inserting “sexual orienta-
18 tion, gender identity,” after “sex,” each place that
19 term appears;

20 (4) in section 806, by inserting “sexual orienta-
21 tion, gender identity,” after “sex,”;

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

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

1 **“SEC. 821. RULES OF CONSTRUCTION.**

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

7 **“SEC. 822. CLAIMS.**

8 “Section 1107 of the Civil Rights Act of 1964 shall
9 apply to this title and section 901, except that for pur-
10 poses of that application, a reference in that section 1107
11 to a ‘covered title’ shall be considered a reference to ‘this
12 title and section 901’.”.

13 (b) PREVENTION OF INTIMIDATION IN FAIR HOUS-
14 ING CASES.—Section 901 of the Civil Rights Act of 1968
15 (42 U.S.C. 3631) is amended by inserting “sexual orienta-
16 tion (as such term is defined in section 802 of this Act),
17 gender identity (as such term is defined in section 802
18 of this Act),” after “sex,” each place that term appears.

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

20 (a) PROHIBITED DISCRIMINATION.—Section
21 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C.
22 1691(a)(1)) is amended by inserting “sexual orientation,
23 gender identity,” after “status,”.

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

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

3 (2) by inserting after subsection (e) the fol-
4 lowing:

5 “(f) The terms ‘gender identity’, ‘sex’, and ‘sexual
6 orientation’ have the meanings given those terms in sec-
7 tion 1101(a) of the Civil Rights Act of 1964 (42 U.S.C.
8 2000e).

9 “(g) The term ‘race’, ‘color’, ‘religion’, ‘national ori-
10 gin’, ‘sex’, ‘sexual orientation’, ‘gender identity’, ‘marital
11 status’, or ‘age’, used with respect to an individual, in-
12 cludes—

13 “(1) the race, color, religion, national origin,
14 sex, sexual orientation, gender identity, marital sta-
15 tus, or age, respectively, of another person with
16 whom the individual is associated or has been associ-
17 ated; and

18 “(2) a perception or belief, even if inaccurate,
19 concerning the race, color, religion, national origin,
20 sex, sexual orientation, gender identity, marital sta-
21 tus, or age, respectively, of the individual.”; and

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

23 “(j) Sections 1101(b) and 1106 of the Civil Rights
24 Act of 1964 shall apply to this title, except that for pur-
25 poses of that application—

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

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

7 (c) **RELATION TO STATE LAWS.**—Section 705(a) of
8 the Equal Credit Opportunity Act (15 U.S.C. 1691d(a))
9 is amended by inserting “, sexual orientation, gender iden-
10 tity,” after “sex”.

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

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

18 **SEC. 12. JURIES.**

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

21 (1) in section 1862, by inserting “sexual ori-
22 entation, gender identity,” after “sex,”;

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

1 (3) in section 1869—

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

4 (B) in subsection (k), by striking the pe-
5 riod at the end and inserting a semicolon; and

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

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

10 “(m) ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-
11 tion’, ‘gender identity’, ‘economic status’, or ‘national ori-
12 gin’, used with respect to an individual, includes—

13 “(1) the race, color, religion, sex, sexual ori-
14 entation, gender identity, economic status, or na-
15 tional origin, respectively, of another person with
16 whom the individual is associated or has been associ-
17 ated; and

18 “(2) a perception or belief, even if inaccurate,
19 concerning the race, color, religion, sex, sexual ori-
20 entation, gender identity, economic status, or na-
21 tional origin, respectively, of the individual.”; and

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

23 **“§ 1879. Rules of construction and claims**

24 “Sections 1101(b), 1106, and 1107 of the Civil
25 Rights Act of 1964 shall apply to this chapter, except that

1 for purposes of that application, a reference in those sec-
2 tions to a ‘covered title’ shall be considered a reference
3 to ‘this chapter’.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
5 The table of sections for chapter 121 of title 28, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

“1879. Rules of construction and claims.”.

○



II

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. 2000c 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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