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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

Mr. POLIS (for himself and _____) introduced the following bill; which was referred to the Committee on _____

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 2011”.

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

7 (a) FINDINGS.—The Congress finds the following:

1 (1) Public school students who are lesbian, gay,
2 bisexual or transgender (LGBT), or are perceived to
3 be LGBT, or who associate with LGBT people, have
4 been and are subjected to pervasive discrimination,
5 including harassment, bullying, intimidation and vio-
6 lence, and have been deprived of equal educational
7 opportunities, in schools in every part of our Nation.

8 (2) While discrimination, including harassment,
9 bullying, intimidation and violence, of any kind is
10 harmful to students and to our education system,
11 actions that target students based on sexual orienta-
12 tion or gender identity represent a distinct and espe-
13 cially severe problem.

14 (3) Numerous social science studies dem-
15 onstrate that discrimination, including harassment,
16 bullying, intimidation and violence, at school has
17 contributed to high rates of absenteeism, dropout,
18 adverse health consequences, and academic under-
19 achievement among LGBT youth.

20 (4) When left unchecked, discrimination, includ-
21 ing harassment, bullying, intimidation and violence,
22 in schools based on sexual orientation or gender
23 identity can lead, and has lead to, life-threatening
24 violence and to suicide.

1 (5) Public school students enjoy a variety of
2 constitutional rights, including rights to equal pro-
3 tection, privacy, and free expression, which are in-
4 fringed when school officials engage in discrimina-
5 tory treatment or are indifferent to discrimination,
6 including harassment, bullying, intimidation and vio-
7 lence, on the basis of sexual orientation or gender
8 identity.

9 (6) While Federal statutory protections ex-
10 pressly address discrimination on the basis of race,
11 color, sex, religion, disability, and national origin,
12 Federal civil rights statutes do not expressly include
13 “sexual orientation” or “gender identity”. As a re-
14 sult, students and parents have often had limited
15 legal recourse to redress for discrimination on the
16 basis of sexual orientation or gender identity.

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

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

23 (2) to provide a comprehensive Federal prohibi-
24 tion of discrimination in public schools based on ac-

1 tual or perceived sexual orientation or gender iden-
2 tity;

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

7 (4) to invoke congressional powers, including
8 but not limited to the power to enforce the 14th
9 Amendment to the Constitution and to provide for
10 the general welfare pursuant to section 8 of article
11 I of the Constitution and the power to enact all laws
12 necessary and proper for the execution of the fore-
13 going powers pursuant to section 8 of article I of the
14 Constitution, in order to prohibit discrimination in
15 public schools on the basis of sexual orientation or
16 gender identity; and

17 (5) to allow the Department of Education to ef-
18 fectively combat discrimination based on sexual ori-
19 entation or gender identity in public schools through
20 regulation and enforcement, as the Department has
21 issued regulations under and enforced title IX of the
22 Education Amendments of 1972 and other non-
23 discrimination laws in a manner that effectively ad-
24 dresses discrimination.

1 **SEC. 3. DEFINITIONS.**

2 For purposes of this Act:

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

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

14 (3) HARASSMENT.—The term “harassment”
15 means conduct that is sufficiently severe, persistent,
16 or pervasive to limit a student’s ability to participate
17 in or benefit from a public school education program
18 or activity, or to create a hostile or abusive edu-
19 cational environment at a public school, including
20 acts of verbal, nonverbal, or physical aggression, in-
21 timidation, or hostility, if such conduct is based
22 on—

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

25 (B) the actual or perceived sexual orienta-
26 tion or gender identity of a person or persons

1 with whom a student associates or has associ-
2 ated.

3 (4) PUBLIC SCHOOLS.—The term “public
4 schools” means public elementary and secondary
5 schools, including local educational agencies, edu-
6 cational service agencies, and State educational
7 agencies, as defined in section 9101 of the Elemen-
8 tary and Secondary Education Act of 1965.

9 (5) SEXUAL ORIENTATION.—The term “sexual
10 orientation” means homosexuality, heterosexuality,
11 or bisexuality.

12 (6) STUDENT.—The term “student” means an
13 individual who is enrolled in a public school or who,
14 regardless of official enrollment status, attends
15 classes or participates in a public school’s programs
16 or educational activities.

17 **SEC. 4. PROHIBITION AGAINST DISCRIMINATION; EXCEP-**
18 **TIONS.**

19 (a) IN GENERAL.—No student shall, on the basis of
20 actual or perceived sexual orientation or gender identity
21 of such individual or of a person with whom the student
22 associates or has associated, be excluded from participa-
23 tion in, or be denied the benefits of, or be subjected to
24 discrimination under any program or activity receiving
25 Federal financial assistance.

1 (b) HARASSMENT.—For purposes of this Act, dis-
2 crimination includes, but is not limited to, harassment of
3 a student on the basis of actual or perceived sexual ori-
4 entation or gender identity of such student or of a person
5 with whom the student associates or has associated.

6 (c) RETALIATION PROHIBITED.—

7 (1) PROHIBITION.—No person shall be excluded
8 from participation in, be denied the benefits of, or
9 be subjected to discrimination, retaliation, or re-
10 prisal under any program or activity receiving Fed-
11 eral financial assistance based on his or her opposi-
12 tion to conduct made unlawful by this Act.

13 (2) DEFINITION.—For purposes of this sub-
14 section, “opposition to conduct made unlawful by
15 this Act” includes, but is not limited to—

16 (A) opposition to conduct reasonably be-
17 lieved to be made unlawful by this Act,

18 (B) any formal or informal report, whether
19 oral or written, to any governmental entity, in-
20 cluding public schools and employees thereof,
21 regarding conduct made unlawful by this Act or
22 reasonably believed to be made unlawful by this
23 Act,

24 (C) participation in any investigation, pro-
25 ceeding, or hearing related to conduct made un-

1 lawful by this Act or reasonably believed to be
2 made unlawful by this Act, and

3 (D) assistance or encouragement provided
4 to any other person in the exercise or enjoy-
5 ment of any right granted or protected by this
6 Act,

7 if in the course of that expression, the person in-
8 volved does not purposefully provide information
9 known to be false to any public school or other gov-
10 ernmental entity regarding a violation, or alleged
11 violation, of this Act.

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

14 Each Federal department and agency which is em-
15 powered to extend Federal financial assistance to any edu-
16 cation program or activity, by way of grant, loan, or con-
17 tract other than a contract of insurance or guaranty, is
18 authorized and directed to effectuate the provisions of sec-
19 tion 4 of this Act with respect to such program or activity
20 by issuing rules, regulations, or orders of general applica-
21 bility which shall be consistent with achievement of the
22 objectives of the Act authorizing the financial assistance
23 in connection with which the action is taken. No such rule,
24 regulation, or order shall become effective unless and until

1 approved by the President. 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. In the case of any action termi-
20 nating, or refusing to grant or continue, assistance be-
21 cause of failure to comply with a requirement imposed
22 pursuant to this section, the head of the Federal depart-
23 ment or agency shall file with the committees of the House
24 and Senate having legislative jurisdiction over the pro-
25 gram or activity involved a full written report of the cir-

1 cumstances and the grounds for such action. No such ac-
2 tion shall become effective until 30 days have elapsed after
3 the filing of such report.

4 **SEC. 6. CAUSE OF ACTION.**

5 (a) CAUSE OF ACTION.—Subject to subsection (c) of
6 this section, an aggrieved individual may assert a violation
7 of this Act in a judicial proceeding. Aggrieved persons may
8 be awarded all appropriate relief, including but not limited
9 to equitable relief, compensatory damages, cost of the ac-
10 tion, and remedial action.

11 (b) RULE OF CONSTRUCTION.—This section shall not
12 be construed to preclude an aggrieved individual from ob-
13 taining other remedies under any other provision of law
14 or to require such individual to exhaust any administrative
15 complaint process or notice-of-claim requirement before
16 seeking redress under this section.

17 (c) STATUTE OF LIMITATIONS.—For actions brought
18 pursuant to this section, the statute of limitations period
19 shall be determined in accordance with section 1658(a) of
20 title 28 of the United States Code. The tolling of any such
21 limitations period shall be determined in accordance with
22 the law governing actions under section 1979 of the Re-
23 vised Statutes (42 U.S.C. 1983) in the forum State.

1 **SEC. 7. STATE IMMUNITY.**

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

6 (b) WAIVER.—A State’s receipt or use of Federal fi-
7 nancial assistance for any program or activity of a State
8 shall constitute a waiver of sovereign immunity, under the
9 11th Amendment to the Constitution or otherwise, to a
10 suit brought by an aggrieved individual for a violation of
11 section 4 of this Act.

12 (c) REMEDIES.—In a suit against a State for a viola-
13 tion of this Act, remedies (including remedies both at law
14 and in equity) are available for such a violation to the
15 same extent as such remedies are available for such a vio-
16 lation in the suit against any public or private entity other
17 than a State.

18 **SEC. 8. ATTORNEY’S FEES.**

19 Section 722(b) of the Revised Statutes (42 U.S.C.
20 1988(b)) is amended by inserting “the Student Non-
21 discrimination Act of 2011,” after “Religious Land Use
22 and Institutionalized Persons Act of 2000,”.

23 **SEC. 9. EFFECT ON OTHER LAWS.**

24 (a) FEDERAL AND STATE NONDISCRIMINATION
25 LAWS.—Nothing in this Act shall be construed to pre-
26 empt, invalidate, or limit rights, remedies, procedures, or

1 legal standards available to victims of discrimination or
2 retaliation under any other Federal law or law of a State
3 or political subdivision of a State, including title VI of the
4 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title
5 IX of the Education Amendments of 1972 (20 U.S.C.
6 1681 et seq.), section 504 of the Rehabilitation Act of
7 1973 (29 U.S.C. 794), the Americans with Disabilities Act
8 of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the
9 Revised Statutes (42 U.S.C. 1983). The obligations im-
10 posed by this Act are in addition to those imposed by title
11 IX of the Education Amendments of 1972 (20 U.S.C.
12 1681 et seq.), title VI of the Civil Rights Act of 1964 (42
13 U.S.C. 2000d et seq.), and the Americans with Disabilities
14 Act of 1990 (42 U.S.C. 12101 et seq.).

15 (b) FREE SPEECH AND EXPRESSION LAWS AND RE-
16 LIGIOUS STUDENT GROUPS.—Nothing in this Act shall be
17 construed to alter legal standards regarding, or affect the
18 rights available to individuals or groups under, other Fed-
19 eral laws that establish protections for freedom of speech
20 and expression, such as legal standards and rights avail-
21 able to religious and other student groups under the 1st
22 Amendment to the Constitution and the Equal Access Act
23 (20 U.S.C. 4071 et seq.).

1 **SEC. 10. SEVERABILITY.**

2 If any provision of this Act, or any application of such
3 provision to any person or circumstance, is held to be un-
4 constitutional, the remainder of this Act, and the applica-
5 tion of the provision to any other person or circumstance
6 shall not be affected.

7 **SEC. 11. EFFECTIVE DATE.**

8 This Act shall take effect 60 days after the date of
9 the enactment of this Act and shall not apply to conduct
10 occurring before the effective date of this Act.