

**AMENDMENT TO THE RULES COMMITTEE PRINT
OF H.R. 5
OFFERED BY MR. POLIS OF COLORADO**

Page 481, after line 22, insert the following:

1 **“Subpart 4—Student Non-Discrimination**

2 **“SEC. 5561. FINDINGS AND PURPOSES.**

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

4 “(1) Public school students who are lesbian,
5 gay, bisexual or transgender (LGBT), or are per-
6 ceived to be LGBT, or who associate with LGBT
7 people, have been and are subjected to pervasive dis-
8 crimination, including harassment, bullying, intimi-
9 dation and violence, and have been deprived of equal
10 educational opportunities, in schools in every part of
11 our Nation.

12 “(2) While discrimination, including harass-
13 ment, bullying, intimidation and violence, of any
14 kind is harmful to students and to our education
15 system, actions that target students based on sexual
16 orientation or gender identity represent a distinct
17 and especially severe problem.

18 “(3) Numerous social science studies dem-
19 onstrate that discrimination, including harassment,

1 bullying, intimidation and violence, at school has
2 contributed to high rates of absenteeism, dropout,
3 adverse health consequences, and academic under-
4 achievement among LGBT youth.

5 “(4) When left unchecked, discrimination, in-
6 cluding harassment, bullying, intimidation and vio-
7 lence, in schools based on sexual orientation or gen-
8 der identity can lead, and has led to, life-threatening
9 violence and to suicide.

10 “(5) Public school students enjoy a variety of
11 constitutional rights, including rights to equal pro-
12 tection, privacy, and free expression, which are in-
13 fringed when school officials engage in discrimina-
14 tory treatment or are indifferent to discrimination,
15 including harassment, bullying, intimidation and vio-
16 lence, on the basis of sexual orientation or gender
17 identity.

18 “(6) While Federal statutory protections ex-
19 pressly address discrimination on the basis of race,
20 color, sex, religion, disability, and national origin,
21 Federal civil rights statutes do not expressly include
22 ‘sexual orientation’ or ‘gender identity’. As a result,
23 students and parents have often had limited legal re-
24 course to redress for discrimination on the basis of
25 sexual orientation or gender identity.

1 “(b) PURPOSES.—The purposes of this subpart are—

2 “(1) to ensure that all students have access to
3 public education in a safe environment free from dis-
4 crimination, including harassment, bullying, intimi-
5 dation and violence, on the basis of sexual orienta-
6 tion or gender identity;

7 “(2) to provide a comprehensive Federal prohi-
8 bition of discrimination in public schools based on
9 actual or perceived sexual orientation or gender
10 identity;

11 “(3) to provide meaningful and effective rem-
12 edies for discrimination in public schools based on
13 actual or perceived sexual orientation or gender
14 identity;

15 “(4) to invoke congressional powers, including
16 but not limited to the power to enforce the 14th
17 Amendment to the Constitution and to provide for
18 the general welfare pursuant to section 8 of article
19 I of the Constitution and the power to enact all laws
20 necessary and proper for the execution of the fore-
21 going powers pursuant to section 8 of article I of the
22 Constitution, in order to prohibit discrimination in
23 public schools on the basis of sexual orientation or
24 gender identity; and

1 “(5) to allow the Department of Education to
2 effectively combat discrimination based on sexual
3 orientation or gender identity in public schools
4 through regulation and enforcement, as the Depart-
5 ment has issued regulations under and enforced title
6 IX of the Education Amendments of 1972 and other
7 nondiscrimination laws in a manner that effectively
8 addresses discrimination.

9 **“SEC. 5562. DEFINITIONS.**

10 “For purposes of this subpart:

11 “(1) PROGRAM OR ACTIVITY.—The terms ‘pro-
12 gram or activity’ and ‘program’ have same meanings
13 given such terms as applied under section 606 of the
14 Civil Rights Act of 1964 (42 U.S.C. 2000d–4a) to
15 the operations of public entities under paragraph
16 (2)(B) of such section.

17 “(2) GENDER IDENTITY.—The term ‘gender
18 identity’ means the gender-related identity, appear-
19 ance, or mannerisms or other gender-related charac-
20 teristics of an individual, with or without regard to
21 the individual’s designated sex at birth.

22 “(3) HARASSMENT.—The term ‘harassment’
23 means conduct that is sufficiently severe, persistent,
24 or pervasive to limit a student’s ability to participate
25 in or benefit from a public school education program

1 or activity, or to create a hostile or abusive edu-
2 cational environment at a public school, including
3 acts of verbal, nonverbal, or physical aggression, in-
4 timidation, or hostility, if such conduct is based
5 on—

6 “(A) a student’s actual or perceived sexual
7 orientation or gender identity; or

8 “(B) the actual or perceived sexual ori-
9 entation or gender identity of a person or per-
10 sons with whom a student associates or has as-
11 sociated.

12 “(4) PUBLIC SCHOOLS.—The term ‘public
13 schools’ means public elementary and secondary
14 schools, including local educational agencies, edu-
15 cational service agencies, and State educational
16 agencies.

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

20 “(6) STUDENT.—The term ‘student’ means an
21 individual who is enrolled in a public school or who,
22 regardless of official enrollment status, attends
23 classes or participates in a public school’s programs
24 or educational activities.

1 **“SEC. 5563. PROHIBITION AGAINST DISCRIMINATION; EX-**
2 **CEPTIONS.**

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

10 “(b) HARASSMENT.—For purposes of this subpart,
11 discrimination includes, but is not limited to, harassment
12 of a student on the basis of actual or perceived sexual ori-
13 entation or gender identity of such student or of a person
14 with whom the student associates or has associated.

15 “(c) RETALIATION PROHIBITED.—

16 “(1) PROHIBITION.—No person shall be ex-
17 cluded from participation in, be denied the benefits
18 of, or be subjected to discrimination, retaliation, or
19 reprisal under any program or activity receiving
20 Federal financial assistance based on his or her op-
21 position to conduct made unlawful by this subpart.

22 “(2) DEFINITION.—For purposes of this sub-
23 section, ‘opposition to conduct made unlawful by this
24 subpart’ includes, but is not limited to—

25 “(A) opposition to conduct reasonably be-
26 lieved to be made unlawful by this subpart,

1 authorized and directed to effectuate the provisions of sec-
2 tion 5563 with respect to such program or activity by
3 issuing rules, regulations, or orders of general applicability
4 which shall be consistent with achievement of the objec-
5 tives of the Act authorizing the financial assistance in con-
6 nection with which the action is taken. No such rule, regu-
7 lation, or order shall become effective unless and until ap-
8 proved by the President. Compliance with any requirement
9 adopted pursuant to this section may be effected—

10 “(1) by the termination of or refusal to grant
11 or to continue assistance under such program or ac-
12 tivity to any recipient as to whom there has been an
13 express finding on the record, after opportunity for
14 hearing, of a failure to comply with such require-
15 ment, but such termination or refusal shall be lim-
16 ited to the particular political entity, or part thereof,
17 or other recipient as to whom such a finding has
18 been made, and shall be limited in its effect to the
19 particular program, or part thereof, in which such
20 noncompliance has been so found, or

21 “(2) by any other means authorized by law,
22 except that no such action shall be taken until the depart-
23 ment or agency concerned has advised the appropriate per-
24 son or persons of the failure to comply with the require-
25 ment and has determined that compliance cannot be se-

1 cured by voluntary means. In the case of any action termi-
2 nating, or refusing to grant or continue, assistance be-
3 cause of failure to comply with a requirement imposed
4 pursuant to this section, the head of the Federal depart-
5 ment or agency shall file with the committees of the House
6 and Senate having legislative jurisdiction over the pro-
7 gram or activity involved a full written report of the cir-
8 cumstances and the grounds for such action. No such ac-
9 tion shall become effective until 30 days have elapsed after
10 the filing of such report.

11 **“SEC. 5565. CAUSE OF ACTION.**

12 “(a) CAUSE OF ACTION.—Subject to subsection (c)
13 of this section, an aggrieved individual may assert a viola-
14 tion of this subpart in a judicial proceeding against any
15 non-Federal entity. Aggrieved persons may be awarded all
16 appropriate relief, including but not limited to equitable
17 relief, compensatory damages, cost of the action, and re-
18 medial action.

19 “(b) RULE OF CONSTRUCTION.—This section shall
20 not be construed to preclude an aggrieved individual from
21 obtaining other remedies under any other provision of law
22 or to require such individual to exhaust any administrative
23 complaint process or notice-of-claim requirement before
24 seeking redress under this section.

1 “(c) STATUTE OF LIMITATIONS.—For actions
2 brought pursuant to this section, the statute of limitations
3 period shall be determined in accordance with section
4 1658(a) of title 28 of the United States Code. The tolling
5 of any such limitations period shall be determined in ac-
6 cordance with the law governing actions under section
7 1979 of the Revised Statutes (42 U.S.C. 1983) in the
8 forum State.

9 **“SEC. 5566. STATE IMMUNITY.**

10 “(a) STATE IMMUNITY.—A State shall not be im-
11 mune under the 11th Amendment to the Constitution of
12 the United States from suit in Federal court for a viola-
13 tion of this subpart.

14 “(b) WAIVER.—A State’s receipt or use of Federal
15 financial assistance for any program or activity of a State
16 shall constitute a waiver of sovereign immunity, under the
17 11th Amendment to the Constitution or otherwise, to a
18 suit brought by an aggrieved individual for a violation of
19 section 5563.

20 “(c) REMEDIES.—In a suit against a State for a vio-
21 lation of this subpart, remedies (including remedies both
22 at law and in equity) are available for such a violation
23 to the same extent as such remedies are available for such
24 a violation in the suit against any public or private entity
25 other than a State.

1 **“SEC. 5567. EFFECT ON OTHER LAWS.**

2 “(a) FEDERAL AND STATE NONDISCRIMINATION
3 LAWS.—Nothing in this subpart shall be construed to pre-
4 empt, invalidate, or limit rights, remedies, procedures, or
5 legal standards available to victims of discrimination or
6 retaliation under any other Federal law or law of a State
7 or political subdivision of a State, including title VI of the
8 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title
9 IX of the Education Amendments of 1972 (20 U.S.C.
10 1681 et seq.), section 504 of the Rehabilitation Act of
11 1973 (29 U.S.C. 794), the Americans with Disabilities Act
12 of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the
13 Revised Statutes (42 U.S.C. 1983). The obligations im-
14 posed by this subpart are in addition to those imposed
15 by title IX of the Education Amendments of 1972 (20
16 U.S.C. 1681 et seq.), title VI of the Civil Rights Act of
17 1964 (42 U.S.C. 2000d et seq.), and the Americans with
18 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

19 “(b) FREE SPEECH AND EXPRESSION LAWS AND RE-
20 LIGIOUS STUDENT GROUPS.—Nothing in this subpart
21 shall be construed to alter legal standards regarding, or
22 affect the rights available to individuals or groups under,
23 other Federal laws that establish protections for freedom
24 of speech and expression, such as legal standards and
25 rights available to religious and other student groups

1 under the 1st Amendment to the Constitution and the
2 Equal Access Act (20 U.S.C. 4071 et seq.).

3 **“SEC. 5568. SEVERABILITY.**

4 “If any provision of this subpart, or any application
5 of such provision to any person or circumstance, is held
6 to be unconstitutional, the remainder of this subpart, and
7 the application of the provision to any other person or cir-
8 cumstance shall not be affected.

9 **“SEC. 5569. EFFECTIVE DATE.**

10 “This subpart shall take effect 60 days after the date
11 of the enactment of the Student Success Act and shall
12 not apply to conduct occurring before the effective date
13 of this subpart.

Page 487, after line 12, insert the following new sec-
tion:

14 **SEC. 505. ATTORNEY’S FEES.**

15 Section 722(b) of the Revised Statutes (42 U.S.C.
16 1988(b)) is amended by inserting “the Student Non-
17 discrimination Act of 2013,” after “Religious Land Use
18 and Institutionalized Persons Act of 2000,”.

