

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

In title VI of the Elementary and Secondary Education Act of 1965, as proposed to be amended by section 601(a) of the bill—

- (1) redesignate part F as part G; and
- (2) insert after part E the following:

1 **“PART F—STUDENT NON-DISCRIMINATION ACT**

2 **OF 2015**

3 **“SEC. 6571. SHORT TITLE.**

4 “This part may be cited as the ‘Student Non-Dis-
5 crimination Act of 2015’.

6 **“SEC. 6572. FINDINGS AND PURPOSES.**

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

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

1 “(2) While discrimination, including harass-
2 ment, bullying, intimidation and violence, of any
3 kind is harmful to students and to our education
4 system, actions that target students based on sexual
5 orientation or gender identity represent a distinct
6 and especially severe problem.

7 “(3) Numerous social science studies dem-
8 onstrate that discrimination, including harassment,
9 bullying, intimidation and violence, at school has
10 contributed to high rates of absenteeism, dropout,
11 adverse health consequences, and academic under-
12 achievement among LGBT youth.

13 “(4) When left unchecked, discrimination, in-
14 cluding harassment, bullying, intimidation and vio-
15 lence, in schools based on sexual orientation or gen-
16 der identity can lead, and has led to, life-threatening
17 violence and to suicide.

18 “(5) Public school students enjoy a variety of
19 constitutional rights, including rights to equal pro-
20 tection, privacy, and free expression, which are in-
21 fringed when school officials engage in discrimina-
22 tory treatment or are indifferent to discrimination,
23 including harassment, bullying, intimidation and vio-
24 lence, on the basis of sexual orientation or gender
25 identity.

1 “(6) While Federal statutory protections ex-
2 pressly address discrimination on the basis of race,
3 color, sex, religion, disability, and national origin,
4 Federal civil rights statutes do not expressly include
5 ‘sexual orientation’ or ‘gender identity’. As a result,
6 students and parents have often had limited legal re-
7 course to redress for discrimination on the basis of
8 sexual orientation or gender identity.

9 “(b) PURPOSES.—The purposes of this part are—

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

15 “(2) to provide a comprehensive Federal prohi-
16 bition of discrimination in public schools based on
17 actual or perceived sexual orientation or gender
18 identity;

19 “(3) to provide meaningful and effective rem-
20 edies for discrimination in public schools based on
21 actual or perceived sexual orientation or gender
22 identity;

23 “(4) to invoke congressional powers, including
24 but not limited to the power to enforce the 14th
25 Amendment to the Constitution and to provide for

1 the general welfare pursuant to section 8 of article
2 I of the Constitution and the power to enact all laws
3 necessary and proper for the execution of the fore-
4 going powers pursuant to section 8 of article I of the
5 Constitution, in order to prohibit discrimination in
6 public schools on the basis of sexual orientation or
7 gender identity; and

8 “(5) to allow the Department of Education to
9 effectively combat discrimination based on sexual
10 orientation or gender identity in public schools
11 through regulation and enforcement, as the Depart-
12 ment has issued regulations under and enforced title
13 IX of the Education Amendments of 1972 and other
14 nondiscrimination laws in a manner that effectively
15 addresses discrimination.

16 **“SEC. 6573. DEFINITIONS.**

17 “For purposes of this part:

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

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

1 ance, or mannerisms or other gender-related charac-
2 teristics of an individual, with or without regard to
3 the individual's designated sex at birth.

4 “(3) HARASSMENT.—The term ‘harassment’
5 means conduct that is sufficiently severe, persistent,
6 or pervasive to limit a student's ability to participate
7 in or benefit from a public school education program
8 or activity, or to create a hostile or abusive edu-
9 cational environment at a public school, including
10 acts of verbal, nonverbal, or physical aggression, in-
11 timidation, or hostility, if such conduct is based
12 on—

13 “(A) a student's actual or perceived sexual
14 orientation or gender identity; or

15 “(B) the actual or perceived sexual ori-
16 entation or gender identity of a person or per-
17 sons with whom a student associates or has as-
18 sociated.

19 “(4) PUBLIC SCHOOLS.—The term ‘public
20 schools’ means public elementary and secondary
21 schools, including local educational agencies, edu-
22 cational service agencies, and State educational
23 agencies, as defined in section 9101 of the Elemen-
24 tary and Secondary Education Act of 1965.

1 “(5) SEXUAL ORIENTATION.—The term ‘sexual
2 orientation’ means homosexuality, heterosexuality, or
3 bisexuality.

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

9 **“SEC. 6575. PROHIBITION AGAINST DISCRIMINATION; EX-**
10 **CEPTIONS.**

11 “(a) IN GENERAL.—No student shall, on the basis
12 of actual or perceived sexual orientation or gender identity
13 of such individual or of a person with whom the student
14 associates or has associated, be excluded from participa-
15 tion in, or be denied the benefits of, or be subjected to
16 discrimination under any program or activity receiving
17 Federal financial assistance under this Act.

18 “(b) HARASSMENT.—For purposes of this part, dis-
19 crimination includes harassment of a student on the basis
20 of actual or perceived sexual orientation or gender identity
21 of such student or of a person with whom the student as-
22 sociates or has associated.

23 “(c) RETALIATION PROHIBITED.—

24 “(1) PROHIBITION.—No person shall be ex-
25 cluded from participation in, be denied the benefits

1 of, or be subjected to discrimination, retaliation, or
2 reprisal under any program or activity receiving
3 Federal financial assistance under this Act based on
4 his or her opposition to conduct made unlawful by
5 this part.

6 “(2) DEFINITION.—For purposes of this sub-
7 section, ‘opposition to conduct made unlawful by this
8 part’ includes—

9 “(A) opposition to conduct reasonably be-
10 lieved to be made unlawful by this part,

11 “(B) any formal or informal report, wheth-
12 er oral or written, to any governmental entity,
13 including public schools and employees thereof,
14 regarding conduct made unlawful by this part
15 or reasonably believed to be made unlawful by
16 this part,

17 “(C) participation in any investigation,
18 proceeding, or hearing related to conduct made
19 unlawful by this part or reasonably believed to
20 be made unlawful by this part, and

21 “(D) assistance or encouragement provided
22 to any other person in the exercise or enjoy-
23 ment of any right granted or protected by this
24 part,

1 if in the course of that expression, the person in-
2 volved does not purposefully provide information
3 known to be false to any public school or other gov-
4 ernmental entity regarding a violation, or alleged
5 violation, of this part.

6 **“SEC. 6576. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**
7 **PORT TO CONGRESSIONAL COMMITTEES.**

8 “ The Department is authorized and directed to ef-
9 fectuate the provisions of section 6575 with respect to any
10 education program or activity under this Act by issuing
11 rules, regulations, or orders of general applicability which
12 shall be consistent with achievement of the objectives of
13 this part authorizing the financial assistance in connection
14 with which the action is taken. No such rule, regulation,
15 or order shall become effective unless and until approved
16 by the President. Compliance with any requirement adopt-
17 ed pursuant to this section may be effected—

18 “(1) by the termination of or refusal to grant
19 or to continue assistance under such program or ac-
20 tivity to any recipient as to whom there has been an
21 express finding on the record, after opportunity for
22 hearing, of a failure to comply with such require-
23 ment, but such termination or refusal shall be lim-
24 ited to the particular political entity, or part thereof,
25 or other recipient as to whom such a finding has

1 been made, and shall be limited in its effect to the
2 particular program, or part thereof, in which such
3 noncompliance has been so found, or

4 “(2) by any other means authorized by law,
5 except that no such action shall be taken until the Sec-
6 retary has advised the appropriate person or persons of
7 the failure to comply with the requirement and has deter-
8 mined that compliance cannot be secured by voluntary
9 means. In the case of any action terminating, or refusing
10 to grant or continue, assistance because of failure to com-
11 ply with a requirement imposed pursuant to this section,
12 the Secretary shall file with the committees of the House
13 and Senate having legislative jurisdiction over the pro-
14 gram or activity involved a full written report of the cir-
15 cumstances and the grounds for such action. No such ac-
16 tion shall become effective until 30 days have elapsed after
17 the filing of such report.

18 **“SEC. 6577. CAUSE OF ACTION.**

19 “(a) CAUSE OF ACTION.—Subject to subsection (c)
20 of this section, an aggrieved individual may assert a viola-
21 tion of this part in a judicial proceeding. Aggrieved per-
22 sons may be awarded all appropriate relief, including but
23 not limited to equitable relief, compensatory damages, cost
24 of the action, and remedial action.

1 “(b) RULE OF CONSTRUCTION.—This section shall
2 not be construed to preclude an aggrieved individual from
3 obtaining other remedies under any other provision of law
4 or to require such individual to exhaust any administrative
5 complaint process or notice-of-claim requirement before
6 seeking redress under this section.

7 “(c) STATUTE OF LIMITATIONS.—For actions
8 brought pursuant to this section, the statute of limitations
9 period shall be determined in accordance with section
10 1658(a) of title 28 of the United States Code. The tolling
11 of any such limitations period shall be determined in ac-
12 cordance with the law governing actions under section
13 1979 of the Revised Statutes (42 U.S.C. 1983) in the
14 forum State.

15 **“SEC. 6578. STATE IMMUNITY.**

16 “(a) STATE IMMUNITY.—A State shall not be im-
17 mune under the 11th Amendment to the Constitution of
18 the United States from suit in Federal court for a viola-
19 tion of this part.

20 “(b) WAIVER.—A State’s receipt or use of Federal
21 financial assistance for any program or activity of a State
22 shall constitute a waiver of sovereign immunity, under the
23 11th Amendment to the Constitution or otherwise, to a
24 suit brought by an aggrieved individual for a violation of
25 section 6575.

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

7 **“SEC. 6579. EFFECT ON OTHER LAWS.**

8 “(a) FEDERAL AND STATE NONDISCRIMINATION
9 LAWS.—Nothing in this part shall be construed to pre-
10 empt, invalidate, or limit rights, remedies, procedures, or
11 legal standards available to victims of discrimination or
12 retaliation under any other Federal law or law of a State
13 or political subdivision of a State, including title VI of the
14 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title
15 IX of the Education Amendments of 1972 (20 U.S.C.
16 1681 et seq.), section 504 of the Rehabilitation Act of
17 1973 (29 U.S.C. 794), the Americans with Disabilities Act
18 of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the
19 Revised Statutes (42 U.S.C. 1983). The obligations im-
20 posed by this part are in addition to those imposed by
21 title IX of the Education Amendments of 1972 (20 U.S.C.
22 1681 et seq.), title VI of the Civil Rights Act of 1964 (42
23 U.S.C. 2000d et seq.), and the Americans with Disabilities
24 Act of 1990 (42 U.S.C. 12101 et seq.).

1 “(b) FREE SPEECH AND EXPRESSION LAWS AND RE-
2 LIGIOUS STUDENT GROUPS.—Nothing in this part shall
3 be construed to alter legal standards regarding, or affect
4 the rights available to individuals or groups under, other
5 Federal laws that establish protections for freedom of
6 speech and expression, such as legal standards and rights
7 available to religious and other student groups under the
8 1st Amendment to the Constitution and the Equal Access
9 Act (20 U.S.C. 4071 et seq.).

10 **“SEC. 6580. SEVERABILITY.**

11 “If any provision of this part, or any application of
12 such provision to any person or circumstance, is held to
13 be unconstitutional, the remainder of this part, and the
14 application of the provision to any other person or cir-
15 cumstance shall not be affected.”.

 In section 601 of the bill, add at the end the fol-
lowing:

16 (c) CONFORMING CHANGE; EFFECTIVE DATE.—

17 (1) CONFORMING CHANGE.—Section 722(b) of
18 the Revised Statutes (42 U.S.C. 1988(b)) is amend-
19 ed by inserting “the Student Nondiscrimination Act
20 of 2015,” after “Religious Land Use and Institu-
21 tionalized Persons Act of 2000,”.

22 (2) EFFECTIVE DATE.—Part F of title VI of
23 the Elementary and Secondary Education Act of

1 1965, as amended by this Act, shall take effect 60
2 days after the date of the enactment of this Act and
3 shall not apply to conduct occurring before the effec-
4 tive date of this Act.

