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A PROPOSED MODEL U.S. EQUALITY ACT INCORPORATING FEMINIST AMENDMENTS

The following is a Proposed Model Equality Act, incorporating Feminist Amendments into Senate Bill 788, which was prepared by the U.S. organization, Feminists in Struggle (FIST), and adopted by FIST on October 2, 2019:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short title.

This Act may be cited as the “Equality Act”.

SEC. 2. Findings and purpose.

(a) Findings.—Congress finds the following:

(1) Discrimination can occur on the basis of sex, which may include pregnancy, childbirth, lactation or a related condition; on the basis of sexual orientation; and on the basis of sex stereotypes, i.e., certain socially imposed notions of proper behaviors, appearance, mannerisms, dress, grooming, interests and personality placed on men and women respectively. In *Price-Waterhouse v. Hopkins*, 490 U.S. 228 (1989), the Supreme Court correctly recognized that sex stereotyping can be evidence of an employer’s

discriminatory motive in proving a claim of sex discrimination. Other courts have declined to extend this ruling to prohibit sex-based grooming codes as sex discrimination. *Jespersen v. Harrah's Operating Co., Inc.*, 444 F. 3d 1104 (9th Cir. 2006). Discrimination based on sexual orientation has been understood by some courts (though not others) as a form of sex discrimination because it involves both a difference in treatment based on sex and sex stereotyping. (*Hively v. Ivy Tech Community College of Indiana*, 853 F. 3d 339 (7th Cir. 2017); *Christiansen v. Omnicom Group, Inc.*, 852 F. 3d 195 (2nd Cir. 2017)). Two new separate protected categories, covering discrimination based on sexual orientation and discrimination based on sexual stereotyping, are needed in addition to those established in the 1964 Civil Rights Act as amended and associated acts, in order to provide greater clarity and consistency and stronger, more comprehensive civil rights protections in federal law.

(2) The need for protections against discrimination based on sex arises from the deeply entrenched, systematic inequalities of power and resources between women and men, and from the domination that men have exercised over women in all aspects of life but with a particular focus on controlling women's sexual and reproductive power. This system of oppression has maintained women's legal, social and economic disadvantages and the corresponding advantages of men, and has perpetuated women's economic dependence on men. The maintenance of accurate sex classifications of individuals is necessary in order to separate biological differences from socially assigned stereotypes and to name, reject, and ultimately dismantle the system of disadvantage and advantage, domination and inequality of power and resources that society has created with respect to these biological differences.

(3) Affirmative recognition of the different biology of females and males is furthermore necessary to combat discrimination against women, since male-dominated institutions have routinely failed to adequately take account of women's biology on an equal basis with that of men when formulating policy and practice that deals with the human body, in areas such as health care, design of goods and services, provision of adequate sanitary facilities, and

competition in some sports. When doing so, the ultimate goal should be equalizing power and resources between women and men.

(4) Lesbians, gay men, bisexuals, and transgender people commonly experience discrimination based on sexual orientation and/or their non-conformity to sex stereotypes in employment and housing, and in securing access to public accommodations, including restaurants, senior centers, stores, places of or establishments that provide entertainment, health care facilities, shelters, government offices, youth service providers including adoption and foster care providers, and transportation. Forms of discrimination include the exclusion and denial of entry, unequal or unfair treatment, harassment, and violence. This discrimination prevents the full participation of lesbians, gay men, bisexuals, and transgender people in society and disrupts the free flow of commerce.

(5) Women are discriminated against based on their sex, including violations of their rights to privacy and bodily sovereignty, denial of equal access to employment, education, and public accommodations, and denial of substantive equality of opportunity, best addressed by maintaining certain single-sex facilities, programs, and activities, and compiling accurate statistics based on sex. Women and girls continue to experience discrimination based on their sex in all areas of life including employment, education and provision of various services. They may be denied equal pay and opportunity for promotions, and may be excluded from or denied equal access to many fields of employment and study. They may be denied rights over their bodies and reproductive capacities, discriminated against and denied reasonable accommodation based on pregnancy, childbirth, or nursing of infants, denied equal opportunity to develop their physical abilities in athletics and be recognized and rewarded for doing so, and may be subjected to discrimination and to a pattern of male violence against females as a class (“male-pattern violence”) in both private and public spaces, including rape and sexual harassment in the workplace, at schools, colleges and universities, in nursing homes, psychiatric institutions, hospitals, prisons, and by providers of public transportation and housing. Women and girls have also faced discrimination in many establishments such as stores and restaurants, and places or establishments that provide other goods or services, such as entertainment or

transportation, including experiencing sexual harassment, differential pricing for substantially similar products and services, and denial of services because they are pregnant or breastfeeding. Because sex discrimination against women and girls has not been eliminated and the privacy and bodily sovereignty of women and girls is routinely disrespected and commonly violated, women and girls continue to need female-only spaces, access to single-sex services and/or female personnel, if desired, to perform personal services and security functions involving bodily contact, and proactive programs to provide privacy, safety and refuge for women and girls from male-pattern violence including violence in the home and to provide equal opportunity for women and girls to develop skills and enjoy educational and employment opportunities previously denied them based on their sex.

(6) Many employers already have taken and continue to take proactive steps, beyond those required by some States and localities, to ensure they are ending discrimination based on sex, sexual orientation and sex stereotyping for all employees. However, others have failed to do so. Many places of public accommodation also recognize the economic imperative to end discrimination and offer goods and services to as many consumers as possible.

(7) Regular and ongoing discrimination in public accommodations against lesbians, gay men, bisexuals, and transgender people, and those who do not conform to sex stereotypes or gender role norms for their sex, contributes to negative social and economic outcomes, and in the case of public accommodations operated by State and local governments, abridges individuals' constitutional rights.

(8) The practice known as "gay conversion therapy" is a form of discrimination that harms lesbians, gay men, bisexuals, and transgender people by coercing lesbians, gay men, and bisexuals to abandon same-sex relationships and engage in heterosexual relationships and/or to pressure lesbians, gay men, bisexuals, and transgender people to conform to sex stereotypes, thereby undermining individuals' sense of self-worth, increasing suicide ideation and substance abuse, exacerbating family conflict, and contributing to second class status.

(9) Lesbians, gay men, bisexuals, and transgender people, as well as women as a sex, face widespread discrimination in employment and various services, including by entities that receive Federal financial assistance. Such discrimination—

(A) is particularly troubling and inappropriate for programs and services funded wholly or in part by the Federal Government;

(B) undermines national progress toward equal treatment regardless of sex, sexual orientation, or non-conformity to sex stereotypes; and

(C) is inconsistent with the principle of equal protection under the Fourteenth Amendment to the Constitution of the United States.

(10) Federal courts have widely recognized that, in enacting the Civil Rights Act of 1964, Congress validly invoked its powers under the Fourteenth Amendment to provide a full range of remedies in response to persistent, widespread, and pervasive discrimination by both private and government actors.

(11) Discrimination by State and local governments on the basis of sex, sexual orientation, and/or nonconformity to sex stereotypes in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, except where sex-based distinctions are necessary to protect the privacy and safety of women and girls from male-pattern violence, to affirmatively address past patterns of sex discrimination and inequality based on sex, or to meet health care or other special needs of women and girls, including lesbians. In many circumstances, such discrimination also violates other constitutional rights such as those of liberty and privacy under the Due Process clause of the Fourteenth Amendment.

(12) Individuals who are lesbians, gay men, bisexuals or transgender, or are perceived to be lesbian, gay, bisexual or transgender, have been subjected to a history and pattern of persistent, widespread, and pervasive discrimination on

the bases of sexual orientation and nonconformity to sex stereotypes by both private sector and Federal, State, and local government actors, including in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance. An explicit and comprehensive national solution is needed to address such discrimination, which has sometimes resulted in violence or death, including the full range of remedies available under the Civil Rights Act of 1964.

(13) The absence of explicit prohibitions of discrimination on the basis of sexual orientation and sex stereotyping under Federal statutory law has created uncertainty for employers and other entities covered by Federal nondiscrimination laws and caused unnecessary hardships for individuals who are lesbians, gay men, bisexuals or transgender. It is therefore important that these prohibitions of discrimination based on sexual orientation and sex stereotyping be explicitly added to federal law as protected categories separate from the sex discrimination category, while maintaining and strengthening sex-based protections for women and girls.

(14) Lesbians, gay men, bisexuals and transgender people often face discrimination when seeking to rent or purchase housing, as well as in every other aspect of obtaining and maintaining housing. Lesbians, gay men, and bisexuals in same-sex relationships, and others who are perceived as being in same-sex relationships, are often discriminated against when two names associated with one sex appear on a housing application. Lesbians, gay men, bisexuals and transgender people often encounter discrimination for non-conformity to sex stereotypes including recognition or discovery that they are lesbian, gay, bisexual or transgender.

(15) National surveys, including a study commissioned by the Department of Housing and Urban Development, show that housing discrimination against lesbians, gay men, bisexuals, and transgender people is very prevalent. For instance, when same-sex couples inquire about housing that is available for rent, they are less likely to receive positive responses from landlords. A national matched-pair testing investigation found that nearly one-half of same-sex couples face adverse, differential treatment when seeking elder housing.

(16) As a result of the absence of explicit prohibitions against discrimination on the basis of sexual orientation and sex stereotyping, credit applicants who are lesbian, gay, bisexual or transgender, or perceived to be lesbian, gay, bisexual or transgender, have unequal opportunities to establish credit. Lesbians, gay men, bisexuals and transgender people can experience being denied a mortgage, credit card, student loan, or many other types of credit simply because of their sexual orientation and/or because they do not conform to stereotypes for their sex.

(17) Numerous studies demonstrate that lesbians, gay men, bisexuals, and transgender people, especially lesbians and other women in same-sex relationships, as well as transgender people, are economically disadvantaged and at a higher risk for poverty compared with other groups of people. For example, older women in same-sex couples have twice the poverty rate of older different-sex couples.

(18) The right to an impartial jury of one's peers and the reciprocal right to jury service are fundamental to the free and democratic system of justice in the United States and are based on the Bill of Rights. There is, however, an unfortunate and long-documented history in the United States of attorneys discriminating against lesbians, gay men, bisexuals and transgender individuals, or those perceived to be lesbian, gay, bisexual or transgender, in jury selection. Failure to bar peremptory challenges based on the actual or perceived sexual orientation or non-conformity to sex stereotypes of an individual not only erodes a fundamental right, duty, and obligation of being a citizen of the United States, but also unfairly creates a second class of citizenship for lesbians, gay men, bisexuals and transgender people as victims, witnesses, plaintiffs, and defendants.

(19) Numerous studies document the shortage of qualified and available homes for the 437,000 young people in the child welfare system and the negative outcomes for the many young people who live in group care or who age out without a permanent family. Although same-sex couples are 7 times more likely to foster or adopt than their different-sex counterparts, many child-placing agencies refuse to serve same-sex couples and individual

lesbians, gay men, bisexuals, and transgender people. This has resulted in a reduction of the pool of qualified and available homes for young people in the child welfare system who need placement on a temporary or permanent basis. Barring discrimination based on sexual orientation and sex stereotypes in foster care and adoption will increase the number of homes available to foster children waiting for foster and adoptive families.

(20) Young people who are lesbians, gay, bisexual or transgender are overrepresented in the foster care system by at least a factor of two and report twice the rate of poor treatment while in care compared to their counterparts who are not lesbian, gay, bisexual or transgender. Young people in foster care who are lesbians, gay, bisexual or transgender have a higher average number of placements, higher likelihood of living in a group home, and higher rates of mental health system involvement and juvenile justice involvement than their peers who are not lesbian, gay, bisexual or transgender because of the high level of bias and discrimination that they face and the difficulty of finding affirming foster placements. Further, due to their physical distance from friends and family, traumatic experiences, and potentially unstable living situations, young people involved with child welfare are at risk for being targeted by traffickers seeking to exploit children. Barring discrimination in child welfare services will ensure improved treatment and outcomes for foster children who are lesbian, gay, bisexual or transgender.

(b) Purpose.—It is the purpose of this Act to establish two new protected classes under federal Civil Rights laws, sexual orientation and sex stereotyping, in order to strengthen sex-based rights for women and girls, to clarify, confirm and create greater consistency in the protections and remedies against discrimination on the basis of all covered characteristics, to provide guidance and notice to individuals, organizations, corporations, and agencies regarding their obligations under the law, and to resolve conflicts of rights among members of protected classes.

SEC. 3. Public accommodations.

(a) Prohibition on discrimination or segregation in public accommodations.—Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

(1) in subsection (a), by inserting “sex, sexual orientation, and sex stereotyping,” before “or national origin”; and

(2) in subsection (b)—

(A) in paragraph (3), by striking “stadium” and all that follows and inserting “stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display; ”;

(B) by re-designating paragraph (4) as paragraph (6);

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

“(4) any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services,

“(5) any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service;

(b) Prohibition on discrimination or segregation under law.—Section 202 of such Act (42 U.S.C. 2000a-1) is amended by inserting “sex, sexual orientation, sex stereotyping,” before “or national origin”.

(c) Rule of construction.—Title II of such Act (42 U.S.C. 2000a et seq.) is amended by adding at the end the following:

“SEC. 208. Rule of construction.

“A reference in this title to an establishment—

“(1) shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program; and

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

SEC. 4. Desegregation of public facilities. Section 301(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000b (a)) is amended by inserting “sex, sexual orientation, sex stereotyping,” before “or national origin”.

SEC. 5. Desegregation of public education.

(a) Definitions.—Section 401(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000c (b)) is amended by inserting “, sexual orientation and sex stereotyping,” before “or national origin”.

(b) Civil actions by the Attorney General.—Section 407 of such Act (42 U.S.C. 2000c–6) is amended, in subsection (a)(2), by inserting “, sexual orientation, sex stereotyping,” before “or national origin”

(c) Classification and assignment.—Section 410 of such Act (42 U.S.C. 2000c–9) is amended by inserting “, sexual orientation, sex stereotyping,” before “or national origin”.

SEC. 6. Federal funding.

Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended by inserting “sex, sexual orientation, sex stereotyping,” before “or national origin,”.

SEC. 7. Employment.

(a) Rules of construction.—Title VII of the Civil Rights Act of 1964 is amended by inserting after section 701 (42 U.S.C. 2000e) the following:

“SEC. 701A. Rules of construction.

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

(b) Unlawful employment practices.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended—

(1) in the section header, by inserting “sexual orientation, and sex stereotyping,” after “sex,”; and

(2) except in subsection (e), by inserting “sexual orientation, and sex stereotyping” after “sex,” each place “sex,” appears; and

(3) in subsection (h), by inserting a comma after “sex,” followed by “sexual orientation, and sex stereotyping,” the second place “sex” appears.

(c) Other unlawful employment practices.—Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3(b)) is amended—

(1) by inserting “sexual orientation, and sex stereotyping,” after “sex,” the first place “sex,” appears.

(d) Claims.—Section 706(g)(2)(A) of the Civil Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by inserting “sexual orientation and sex stereotyping” after “sex,”.

(e) Employment by Federal Government.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (a), by inserting “sexual orientation, and sex stereotyping,” after “sex,”; and

(2) in subsection (c), by inserting a comma after “sex”, followed by “sexual orientation, and sex stereotyping,”.

(f) Government Employee Rights Act of 1991.—The Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16a et seq.) is amended—

(1) in section 301(b), by inserting “sexual orientation, and sex stereotyping,” after “sex,”;

(2) in section 302(a)(1), by inserting “sexual orientation, and sex stereotyping,” after “sex,”; and

(3) by adding at the end the following:

“SEC. 305. Rules of construction and claims.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this title except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex, sexual orientation, sex stereotyping, or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, sex stereotyping, national origin, age, or disability’.”.

(g) Congressional Accountability Act of 1995.—The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) is amended—

(1) in section 201(a)(1) (2 U.S.C. 1311(a)(1)) by inserting “sexual orientation, sex stereotyping,” before “or national origin,”; and

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

“SEC. 208. Rules of construction and claims.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to section 201 (and remedial provisions of this Act related to section 201) except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex, sexual orientation, sex stereotyping, or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual

orientation, sex stereotyping, national origin, age, or disability’.”.

(h) Civil Service Reform Act of 1978.—Chapter 23 of title 5, United States Code, is amended—

(1) in section 2301(b)(2), by striking “sex,” and inserting “sex, sexual orientation, sex stereotyping,”;

(2) in section 2302—

(A) in subsection (b)(1)(A), by inserting “, sexual orientation, sex stereotyping,” before “or national origin,”; and

(B) in subsection (d)(1), by inserting “, sexual orientation, sex stereotyping,” before “or national origin,”; and

(3) by adding at the end the following:

“SEC. 2307. Rules of Construction and claims.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter (and remedial provisions of this title related to this chapter) except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex, sexual orientation, sex stereotyping, or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, sex stereotyping, national origin, age, handicapping condition, marital status, or political affiliation.’ ”

SEC. 8. Intervention.

Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h–2) is amended by inserting after sex “, sexual orientation, sex stereotyping,” before “or national origin.”

SEC. 9. Miscellaneous.

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

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

(2) by inserting after the title heading the following:

“SEC. 1101. Definitions and Rules.

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

“(1) RACE; COLOR; RELIGION; SEX; SEXUAL ORIENTATION; SEX STEREOTYPING; NATIONAL ORIGIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orientation’, ‘sex stereotyping’, or ‘national origin’, used with respect to an individual, for purposes of determining whether an act of discrimination has been committed against that individual, includes—

“(A) the race, color, religion, sex, sexual orientation, non-conformity with sex stereotypes, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(B) a perception or belief, even if inaccurate, held by the person who commits the act, concerning the race, color, religion, sex, sexual orientation, non-conformity with sex stereotypes, or national origin, respectively, of the individual.

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

“(3) SEX.—The term ‘sex’ (also referred to as ‘biological sex’ herein) refers to an individual’s status of being female or male. Distinguishing females from males is based on genes, gonads, and the gametes that an individual’s body is configured to produce. Sex is ordinarily determined at the time of fertilization

and is accurately observed at or before birth, with rare exceptions. Sex cannot be changed.

“(4) SEX DISCRIMINATION.—The term ‘sex discrimination’ used with respect to an individual or group of individuals means discrimination based on the sex of that individual or individuals, and includes discrimination based on pregnancy, childbirth, lactation or a related condition. Sex stereotyping may be considered as evidence to prove a claim of sex discrimination

“(5) FEMALES/WOMEN/GIRLS.—Refer to members of the sex that typically has the capacity to bear offspring and/or produce large gametes called eggs.

“(6) MALES/MEN/BOYS.—Refer to members of the sex that typically has the capacity of producing small, usually motile gametes called sperm.

“(7) INTERSEX. - People with differences of sexual development, sometimes referred to as ‘intersex’, should ordinarily be classified as male or female on the same basis as others based on reproductive structure and function. In situations where specific measures or adjustments are warranted to fulfill the rights of the individuals concerned in light of their particular intersex conditions, measures should be devised that do so while preserving the sex-based rights of women and girls.

“(8) SEXUAL ORIENTATION.—The term ‘sexual orientation’ means lesbianism, male homosexuality, heterosexuality, or bisexuality, based on whether a person is attracted to or in intimate relationships with persons of the same and/or other sex.

“(9) SEX STEREOTYPING.— ‘Sex stereotyping’ means the use of sex stereotypes in determinations made about an individual, or other discrimination based on an individual’s nonconformity with sex stereotypes. ‘Sex stereotypes’ also known as ‘gender roles’ or ‘gender norms’, mean notions of proper behaviors, appearance, mannerisms, dress and grooming socially imposed on males and females respectively. Sex stereotypes are particularly harmful to women and girls as they help maintain and justify sex discrimination and women’s subordinate roles relative to men; however, sex stereotypes can be restrictive to men and boys as well and discriminatory

toward lesbians, gay men, bisexuals and transgender people, who do not conform to these stereotypes and/or may otherwise reject the stereotypes assigned to their sex. Dress and grooming codes or standards of behavior or appearance by employers or schools that are sex-specific and/or treat men and women differently discriminate on the basis of sex stereotyping.

(A) Sex stereotyping includes the expectation that individuals will manifest behaviors, appearance, dress, grooming, interests and personality stereotypically associated with their sex and refrain from manifesting those associated with the other sex. Discrimination based on an individual's nonconformity with such expectations constitutes sex-stereotyping discrimination. Sex stereotyping also includes the notion that sexual orientation will be heterosexual for both sexes (i.e. part of the stereotype of masculinity is being attracted to women, and part of the stereotype of femininity is being attracted to men).

(B) Sex stereotyping discrimination does not include merely recognizing or referring, accurately or in good faith, to the biological sex of an individual, or seeking to ascertain an individual's biological sex for legitimate reasons consistent with this Act, irrespective of whether that person holds a deeply personal sense of identity that conflicts with or denies their biological sex.

(10) TRANSGENDER. – Transgender is a term adopted by a subset of people who do not conform to sex stereotypes commonly associated with their biological sex and who may hold a deeply personal sense of identity that conflicts with or denies their biological sex.

“(b) Rules.—In a covered title referred to in subsection (a)—

“(1) (with respect to sex) pregnancy, childbirth, or a related medical condition, and other reproductive health care and breastfeeding shall not receive less favorable treatment than other physical conditions; and shall receive reasonable accommodations from employers and educational institutions and places of public accommodation as needed; and

“(2) by inserting after section 1105 the following:

“SEC. 1106. Rules of construction.

“(a) Sex and sex stereotyping.—Nothing in section 1101 or the provisions of a covered title incorporating a term defined or a rule specified in that section shall be construed—

“(1) to prohibit the classification of individuals as female or male based on primary characteristics related to reproductive structure and function as observed and recorded at birth (subject to correction in the case of persons with differences of sexual development based on evidence of reproductive structure and function that becomes known at a later time, but not otherwise subject to modification), or to prohibit any public or private entity from inquiring about an individual’s sex, or relying on such records, for any legitimate purpose consistent with this Act ;

“(2) to limit the protection against an unlawful practice on the basis of pregnancy, childbirth, lactation, or a related condition provided by section 701(k);

“(3) to limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than that covered title, prohibiting a practice on the basis of sex;

“(4) to prohibit places of public accommodation, schools, government entities or employers or other covered programs, services, establishments and activities, from establishing or utilizing female-only facilities, programs, or services such as transportation services, multi-stall toilets, locker rooms, changing rooms, communal showers, battered women’s shelters, refuges, homeless shelters, rape crisis centers, jail cells, bedrooms in residential facilities, hospital rooms, facilities providing intimate services such as massage or intimate grooming, or other places where women are sharing private facilities or are in states of undress and/or where their privacy may be compromised and/or their safety may be at risk from male-pattern violence against females;

“(5) to prohibit a public or private employer from discrimination on the basis of biological sex when sex is a ‘bona fide occupational qualification’ for the position.

“(6) to prohibit the establishment or continuation by places of public accommodation, schools, employers or government entities of female-only programs, services or activities whose purpose is to advance the status of women and girls and/or ensure their well-being and opportunity for development, including but not limited to sports programs, women’s health clinics, counseling programs, scholarship programs, clubs, political and cultural programs, or education and training or jobs programs to bring women into fields of study, trades, and careers, and into leadership positions to which they have been previously excluded or underrepresented;

“(7) to prohibit as sex, sexual orientation or sex stereotyping discrimination, lesbian, gay, bisexual, and/or transgender community organizations or other places of public accommodation, schools, or government entities from developing programs, clubs and events exclusively for their constituents, including provision of separate programs for lesbians, for gay men, for bisexual men, for bisexual women and for transgender persons;

“(8) to prohibit places of public accommodation, schools, government entities or employers or other covered programs, services establishments and activities, from establishing or utilizing separate facilities for transgender individuals including toilets, showers, changing rooms and refuges, and including facilities commonly known as “gender neutral” that are open to both sexes as long as such facilities do not reduce the availability of and access to single sex facilities for women and girls.”

“(9) to prohibit collection or publication of statistics, censuses, law enforcement reports, medical records, or other research and reports collected by any covered entity, on the basis of biological sex.

“(b) Claims and remedies not precluded.—Except as otherwise provided herein, nothing in section 1101 or a covered title shall be construed to limit the claims or remedies available to any individual for an unlawful practice on the

basis of race, color, religion, sex, sexual orientation, sex stereotyping, or national origin, including claims brought pursuant to section 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or any other law, including a Federal law amended by the Equality Act, regulation, or policy.

“SEC. 1107. Claims.

“The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under a covered title, or provide a basis for challenging the application or enforcement of a covered title.”

SEC. 10. Housing.

(a) Fair Housing Act.—The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended—

(1) in section 802 (42 U.S.C. 3602), by adding at the end the following:

“(p) ‘Sex’, ‘sexual orientation’, and ‘sex stereotyping’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(q) ‘Race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orientation’, ‘sex stereotyping’, ‘handicap’, ‘familial status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex, sexual orientation, non-conformity to sex stereotypes, handicap, familial status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex, sexual orientation, non-conformity to sex stereotypes, handicap, familial status, or national origin, respectively, of the individual.”;

(2) in section 804, by inserting “, sexual orientation, sex stereotyping,” after “sex,” each place that term appears;

(3) in section 805, by inserting “, sexual orientation, sex stereotyping,” after “sex,” each place that term appears;

(4) in section 806, by inserting “, sexual orientation, sex stereotyping,” after “sex,”;

(5) in section 808(e)(6), by inserting “, sexual orientation, sex stereotyping,” after “sex,”; and

(6) by adding at the end the following:

“SEC. 821. Rules of construction.

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

“SEC. 822. Claims.

“Section 1107 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1107 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.”.

(b) Prevention of intimidation in fair housing cases.—Section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended by inserting “, sexual orientation, (as such term is defined in section 802 of this Act), sex stereotyping (as such term is defined in section 802 of this Act),” after “sex,” each place that term appears.

SEC. 11. Equal credit opportunity.

(a) Prohibited discrimination.—Section 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)) is amended by inserting ‘sex, sexual orientation, sex stereotyping, or marital status’ instead of “sex or marital status”.

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

(1) by re-designating subsections (f) and (g) as subsections (h) and (i), respectively;

(2) by inserting after subsection (e) the following:

“(f) The terms ‘sex’, ‘sexual orientation’, and ‘sex stereotyping’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(g) The term ‘race’, ‘color’, ‘religion’, ‘national origin’, ‘sex’, ‘sexual orientation’, ‘sex stereotyping’, ‘marital status’, or ‘age’, used with respect to an individual, includes—

“(1) the race, color, religion, national origin, sex, sexual orientation, non-conformity to sex stereotypes, marital status, or age, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, national origin, sex, sexual orientation, non-conformity to sex stereotypes, marital status, or age, respectively, of the individual.”; and

(3) by adding at the end the following:

“(j) Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application—

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

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

(c) Relation to State laws.—Section 705(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691d (a)) is amended by striking “sex or marital status”, and inserting “sex, sexual orientation, sex stereotyping, or marital status,” in its place.

(d) Civil liability.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

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

SEC. 12. Juries.

(a) In general.—Chapter 121 of title 28, United States Code, is amended—
(1) in section 1862, by inserting “, sexual orientation, sex stereotyping,” after “sex,”;

(2) in section 1867(e), in the second sentence, by inserting “, sexual orientation, sex stereotyping,” after “sex,”;

(3) in section 1869—

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

(B) in subsection (k), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

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

“(m) ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orientation’, ‘sex stereotyping’, ‘economic status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex, sexual orientation, non-conformity to sex stereotypes, economic status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex, sexual orientation, non-conformity to sex stereotypes, economic status, or national origin, respectively, of the individual.”; and

(4) by adding at the end the following:

“§ 1879. Rules of construction and claims

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

(b) Technical and conforming amendment.—the table of sections for chapter 121 of title 28, United States Code, is amended by adding at the end the following:

“1879. Rules of construction and claims.”

NOTE:

The Feminist Assembly of FIST decided to do a slight edit of the definition of "sex" to make it more precise and to add a definition for "transgender" since transgender people are referenced throughout the text of the bill as we have rewritten it with our Feminist Amendments. Otherwise our Feminist Amendments are unchanged from our previous released draft.