

114TH CONGRESS
2D SESSION

H. R. 5812

To repeal executive overreach, to clarify that the proper constitutional authority for social transformation belongs to the legislative branch.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2016

Mr. OLSON (for himself and Mr. GROTHMAN) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To repeal executive overreach, to clarify that the proper constitutional authority for social transformation belongs to the legislative branch.

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 “Civil Rights Uni-
5 formity Act of 2016.”

6 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
7 **PURPOSE.**

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

9 (1) Over the past half century, Congress has
10 passed numerous civil rights laws prohibiting dis-

1 crimination on the basis of “sex,” a designation long
2 understood to be grounded in objective biology up to
3 the present day. There is no evidence that Congress
4 or the American people ever understood the word sex
5 or gender in civil rights laws to include subjective
6 self-identification.

7 (2) For years, advocates have pressed Congress
8 to include a person’s subjective self-declared “gender
9 identity” in Federal civil rights laws that prohibit
10 sex discrimination. Congress has declined to do so
11 except for the Shepard-Byrd Act of 2009 and the
12 Violence Against Women Reauthorization Act of
13 2013 where gender identity is defined as “actual or
14 perceived gender-related characteristics” with “gen-
15 der”, there referring to characteristics associated
16 with biological males and females.

17 (3) This demonstrates that when Congress
18 wants to protect sex, it does so explicitly; when it
19 wants to also elevate gender identity it does so ex-
20 plicitly; and when it does not want to elevate gender
21 identity, it can do so either explicitly or by simply
22 not disturbing the status quo.

23 (4) Despite the complete clarity of this point,
24 President Barack Obama’s administration has at-
25 tempted to effectively replace the word “sex” with

1 the phrase “gender identity” for purposes of Federal
2 antidiscrimination law and policy through a series of
3 unilateral executive actions.

4 (5) For example, on December 15, 2014, Attor-
5 ney General Eric Holder announced that the De-
6 partment of Justice would reinterpret the ban on
7 “sex” discrimination under title VII of the Civil
8 Rights Act of 1964 to encompass “gender identity.”
9 This was followed on March 27, 2015, by an Equal
10 Employment Opportunity Commission decision hold-
11 ing that declining to use a female pronoun to ad-
12 dress a male who identifies as female constituted
13 “sex” discrimination under title VII.

14 (6) On May 9, 2016, the Obama administration
15 sued the State of North Carolina and threatened it
16 with fines and loss of Federal funding if it did not
17 adopt the administration’s incorrect readings of title
18 VII of the Civil Rights Act of 1964 and title IX of
19 the Education Amendments of 1972.

20 (7) On May 13, 2016, the Departments of Jus-
21 tice and Education issued a “significant guidance”
22 letter stating that under title IX of the Education
23 Amendments of 1972 “when a school provides sex-
24 segregated activities and facilities, transgender stu-
25 dents must be allowed to participate in such activi-

1 ties and access such facilities consistent with their
2 gender identity.” The guidance further states that
3 schools “must treat a student’s gender identity as
4 the student’s sex” including in the context of “sex-
5 segregated restrooms, locker rooms, shower facilities,
6 housing, and athletic teams, as well as single-sex
7 classes.” In other words, the Departments consider
8 it a title IX violation if a person of the male sex who
9 self-identifies as a female is not granted unfettered
10 access to women’s or girls’ dorms, showers, locker
11 rooms, and bathrooms. This, despite assurance that
12 such a thing would never happen from the likes of
13 Ruth Bader Ginsburg who wrote in 1975 that “sep-
14 arate places to disrobe, sleep, perform personal bod-
15 ily functions are permitted, in some situations re-
16 quired, by regard for individual privacy.” This posi-
17 tion was codified in Federal regulations, 34 CFR
18 106.33, which state that recipients of Federal funds
19 “may provide separate toilet, locker room, and show-
20 er facilities on the basis of sex,” with sex obviously
21 referring to biology.

22 (8) Also on May 13, 2016, the Department of
23 Health and Human Services finalized regulations
24 that redefined the Affordable Care Act’s prohibition
25 on “sex” discrimination in federally funded health

1 programs and activities to cover “gender identity”,
2 thereby opening health care professionals and insur-
3 ers to extensive liability if they decline to participate
4 in or pay for “gender transition” treatments or “sex
5 change” operations.

6 (9) The Obama administration’s actions are an
7 affront to the rule of law, the separation of powers,
8 the will of the people, language, history, safety, pri-
9 vacy, and biological realities.

10 (b) PURPOSE.—The purposes of this Act are—

11 (1) to prevent the executive branch from unilat-
12 erally rewriting Federal civil rights laws by enacting
13 or implementing any policy or undertaking any en-
14 forcement action that is based on construing the
15 term “sex” or “gender” to mean “gender identity”;
16 and

17 (2) to ensure that gender identity is not treated
18 as a protected class in Federal law or policy without
19 the affirmative approval of the people’s representa-
20 tives in Congress.

21 **SEC. 3. PROHIBITION OF POLICIES REDEFINING SEX TO**
22 **MEAN GENDER IDENTITY.**

23 (a) RULE OF CONSTRUCTION.—In determining the
24 meaning of any Federal civil rights law, and of any related
25 ruling, regulation, guidance, or interpretation of the var-

1 ious administrative bureaus and agencies of the United
2 States, the words “sex” and “gender” and their equiva-
3 lents shall not be interpreted to mean “gender identity”
4 or its equivalent, and the words “man” and “woman” and
5 their equivalents shall refer exclusively to a person’s sex.

6 (b) RULE OF INTERPRETATION.—No Federal civil
7 rights law shall be interpreted to treat gender identity or
8 transgender status as a protected class, unless such law
9 expressly designates “gender identity” or “transgender
10 status” as a protected class.

11 (c) DEFINITION OF “FEDERAL CIVIL RIGHTS
12 LAW”.—For purposes of this Act, the term “Federal civil
13 rights law” means any Federal law prohibiting discrimina-
14 tion on the basis of sex or gender, including title IX of
15 the Education Amendments of 1972 (20 U.S.C. 1681 et
16 seq.), the Civil Rights Act of 1964 (42 U.S.C. 2000a et
17 seq.), the Fair Housing Act (42 U.S.C. 3601 et seq.), the
18 Patient Protection and Affordable Care Act (Public Law
19 111–148), and any other Federal law or provision thereof
20 prohibiting discrimination on the basis of sex or gender.

○