



HUMAN
RIGHTS
CAMPAIGN®

December 11, 2017

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert C. “Bobby” Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington DC 20515

Dear Chairwoman Foxx and Ranking Member Scott:

On behalf of the Human Rights Campaign (HRC), I write to express our opposition to H.R. 4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER) Act. HRC strongly opposes provisions that would allow discrimination as well as provisions that undermine protections against sexual harassment and assault on campus.

The PROSPER Act contains several provisions that would allow for the use of religion to justify otherwise prohibited discrimination that could negatively impact LGBTQ students. Section 117, modeled after the anti-LGBTQ First Amendment Defense Act, would prohibit any federal, state, or local government from taking any adverse action against a school receiving funds under Title IV of the Higher Education Act (HEA) for refusing to comply with HEA requirements because of their religious mission or affiliation. This could potentially allow schools to violate state and local non-discrimination protections, allowing state-sanctioned discrimination against LGBTQ students and other minorities with public funds.

Additionally, Section 115 would undermine schools’ ability to enforce their own non-discrimination policies for student organizations. Currently, many schools require organizations, including religious organizations, to adhere to non-discrimination policies if they wish to be recognized as an official student organization and gain access to the privileges that come with that recognition, such as access to school facilities and student funding. Section 115 would create a special exemption just for religious groups to allow them to openly violate these non-discrimination policies, and schools would be required to continue to provide recognition and the resulting funding and privileges to these groups.

Oddly, in a section regarding free speech protections, the PROSPER Act inexplicably favors religious speech above other types of speech in Section 111. It is unclear how this language could undermine important protections against harassment.

The PROSPER Act also rolls back protections for survivors of sexual violence. Current regulations require that colleges and universities provide an equitable process to responding to claims of sexual harassment and assault. However, Section 488(f)(3) would allow schools to

choose what standard of evidence to use in a sexual misconduct adjudication process, potentially using standards as strict as “beyond a reasonable doubt” instead of the “preponderance of evidence” standard used in civil lawsuits involving discrimination. The “preponderance” standard puts both parties on equal footing, and is a genuinely equitable way to address sexual violence; a stricter standard would tip the scale in favor of respondents.

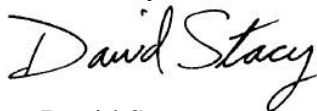
Also of concern is Section 488(f)(1)(C), which would amend the Clery Act to allow schools to delay initiating or suspend an investigation or institutional disciplinary proceeding relating to a case of sexual assault in response to a request from a law enforcement agency or prosecutor. This would severely limit students’ right under Title IX to access their education free from a hostile environment on campus.

While we support instituting campus climate surveys that measure sexual misconduct, Section 162 would restrict the Secretary of Education from regulating what schools need to include on campus climate surveys and would prohibit the Secretary from comparing surveys between institutions of higher education. This will make it more difficult for prospective students to compare how institutions of higher education are addressing sexual violence and the climate on campuses in relation to sexual violence.

LGBTQ people are disproportionately affected by sexual assault and harassment, and the stigma that many LGBTQ people face can make it more difficult for survivors to report. Studies suggest that nearly half of bisexual women have been raped and half of transgender people will experience sexual violence at some point in their lifetimes. These changes to campus’ handling of sexual violence would therefore disproportionately impact LGBTQ students.

As currently written, the PROSPER Act would further erode civil rights protections for students. HRC opposes the legislation and supports amendments to strip these concerning provisions.

Sincerely,

A handwritten signature in black ink that reads "David Stacy". The signature is written in a cursive, flowing style.

David Stacy
Government Affairs Director