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2D SESSION

H. R. 8072

To review the termination characterization of former employees of the Department of State who were fired by reason of the sexual orientation of such employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2022

Mr. CASTRO of Texas (for himself, Mr. CICILLINE, and Ms. TITUS) introduced the following bill; which was referred to the Committee on Foreign Affairs

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A BILL

To review the termination characterization of former employees of the Department of State who were fired by reason of the sexual orientation of such employees, and for other purposes.

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 ''Lavender Offense Victim Exoneration Act of 2022'' or the ''LOVE Act of 2022''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As a consequence of the so-called ''Lavender Scare'', at least 1,000 people were wrongfully dismissed from the Department of State for alleged homosexuality during the 1950s and well into the 1960s.

(2) According to the Department of State's Bureau of Diplomatic Security, Department of State employees were forced out of the Department on the grounds that their sexual orientation ostensibly rendered them vulnerable to blackmail and made them security risks.

(3) In addition to those wrongfully terminated, many other patriotic Americans were prevented from joining the Department due to a screening process that was put in place to prevent the hiring of those who, according to the findings of the Bureau of Diplomatic Security, ''seemed like they might be gay or lesbian''.

(4) Congress bears a special measure of responsibility for these discriminatory actions as the Department's actions were in part in response to congressional investigations into ''sex perversion of Federal employees'', reports on the employment of ''moral perverts by Government Agencies'', hearings and pressure placed on the Department through the

appropriations process and congressional complaints that Foggy Bottom was rampant with homosexuals who were sympathetic to Communism and vulnerable to blackmail.

(5) Between 1950 and 1969, the Department of State was required to report on the number of homosexuals fired each year as part of their annual appeals before Committees on Appropriations.

(6) Although the worst effects of the ''Lavender Scare'' are behind us, as recently as the early 1990s, the Department of State's diplomatic security office was investigating State personnel thought to be gay and driving them out of government service as ''security risks''.

(7) In 1994, Secretary of State Warren Christopher issued a prohibition against discrimination in the Department of State, including that based on sexual orientation.

(8) In 1998, President William Jefferson Clinton signed Executive Order 13087 barring discrimination on the basis of sexual orientation.

(9) On January 9, 2017, Secretary of State John Kerry issued a statement regarding the ''Lavender Scare'', saying, ''On behalf of the Department, I apologize to those who were impacted by the prac-

tices of the past and reaffirm the Department's steadfast commitment to diversity and inclusion for all our employees, including members of the LGBTI community.''.

SEC. 3. SECRETARY OF STATE REVIEW.

(a) REVIEW.—The Secretary of State shall—

(1) review all Department of State terminations of employees of the Department that occurred as a consequence of the Lavender Scare; and

(2) identify all such former employees.

(b) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Secretary of State shall, consistent with applicable privacy regulations, compile in a publicly available report the information reviewed under subsection (a). Such report shall include historical statements made by officials of the Department of State and Members of Congress that announced or described policies and actions that were part of the Lavender Scare.

SEC. 4. ESTABLISHMENT OF RECONCILIATION BOARD.

(a) ESTABLISHMENT.—The Secretary of State shall establish an independent Reconciliation Board (in this section referred to as the ''Board'') to review the cases of employees of the Department of State identified pursuant to section 3(a), as well as employees of the Department who suffered discrimination as a consequence of the Lav-

ender Scare, and correct the records of such terminated employees.

(b) COMPOSITION OF BOARD.—The Board shall be composed of the following:

(1) A Chair, as selected by the Secretary of State.

(2) The Director General of the Foreign Service.

(3) The Director of Human Resources of the Department of State.

(4) The Director of the Office of the Historian of the Department.

(5) The Director of the Office of Civil Rights of the Department.

(6) An individual to represent the current employees of the Department who are members of the LGBTQ community.

(7) Other individuals, as determined by the Secretary of State.

(c) STAFF.—The Secretary of State shall assign additional employees of the Department of State to serve as staff to support the activities of the Board.

(d) DUTIES.—The Board shall—

(1) consistent with applicable privacy regulations, contact all individuals whose employment with

the Department of State was terminated as a result of their sexual orientation, whether real or perceived, as a consequence of the Lavender Scare or, in the case of deceased former employees, the appropriate family members of such employees, to inform such employees or family members that the termination of such employees has been determined to be inappropriate and that, if desired, the employment records of such employees can be changed to reflect such determination;

(2) receive oral testimony and written evidence of any Department employees or appropriate family members of deceased employees identified in the report required under section 3 in order that such testimony and evidence may serve as an official record of such actions and the impact of such actions on the lives of United States citizens serving their Nation; and

(3) provide an opportunity for any former Department employee not identified in such report, or their appropriate family member, to petition the Board to identify additional individuals whose employment was terminated or who suffered discrimination as a result of their sexual orientation, wheth-

er real or perceived, as a consequence of the Lavender Scare.

(e) REVIEW OF CLAIMS.—

(1) IN GENERAL.—Not later than 150 days after receiving a petition under subsection (d)(3), the Board shall—

(A) review such petition; and

(B) in accordance with paragraph (2), make a determination regarding whether the employment termination of the individual who is the subject of such petition was a result of their sexual orientation, whether real or perceived, as a consequence of the Lavender Scare.

(2) TESTIMONY AND EVIDENCE.—In making determinations under paragraph (1)(B), the Board shall consider all testimony and evidence under subsection (d) and any pertinent information under paragraph (3).

(3) COOPERATION.—In response to a petition under subsection (d)(3), the Secretary of State shall produce pertinent information to rebut an assertion contained in such petition that an employee of the Department was terminated as a consequence of the Lavender Scare.

(f) ADJUSTMENT OF EMPLOYEE RECORDS.—The Secretary of State shall adjust all employee records for individuals whose employment was terminated as a result of their sexual orientation, whether real or perceived, as a consequence of the Lavender Scare, based on the report under section 3(a) and the Board's determinations made pursuant to subsection (e)(1)(B), to reflect the inappropriate nature of such terminations.

(g) TERMINATION.—The Board shall terminate on the date that is five years after the date of the establishment of the Board.

(h) DEFINITION.—In this section, the term ''appropriate family member'' means any spouse, descendent, parent, grandparent, sibling, legal guardian, or partner as determined by the Board, and the descendants of any such partner.

SEC. 5. ISSUANCE OF APOLOGY.

(a) FINDING.—Secretary of State Kerry delivered the following apology on January 9, 2017: ''Throughout my career, including as Secretary of State, I have stood strongly in support of the LGBTI community, recognizing that respect for human rights must include respect for all individuals. LGBTI employees serve as proud members of the State Department and valued colleagues dedicated to the service of our country. For the last several years, the

Department has pressed for the families of LGBTI officers to have the same protections overseas as families of other officers. In 2015, to further promote LGBTI rights throughout the world, I appointed the first ever Special Envoy for the Human Rights of LGBTI Persons. In the past—as far back as the 1940s, but continuing for decades—the Department of State was among many public and private employers that discriminated against employees and job applicants on the basis of perceived sexual orientation, forcing some employees to resign or refusing to hire certain applicants in the first place. These actions were wrong then, just as they would be wrong today. On behalf of the Department, I apologize to those who were impacted by the practices of the past and reaffirm the Department's steadfast commitment to diversity and inclusion for all our employees, including members of the LGBTI community.''.

(b) CONGRESSIONAL APOLOGY.—Congress hereby offers a formal apology for its responsibility in encouraging the Lavender Scare and similar policies at the Department of State, as these policies were in part a response to congressional investigations into ''sex perversion of Federal employees'', reports on the employment of ''moral perverts by Government Agencies'', and hearings or pressure other-

wise placed on the Department of State through the legislative process.

SEC. 6. ESTABLISHMENT OF PERMANENT EXHIBIT ON THE LAVENDER SCARE.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of State, working in coordination with the current public-private partnership associated with the Department of State's National Museum of American Diplomacy, shall establish in the Museum a permanent exhibit on the Lavender Scare.

(b) SPECIFICATIONS.—The exhibit established under subsection (a)—

(1) should provide access to the reports compiled by the Director General of the Foreign Service and Director of Human Resources of the Department of State under section 3(b); and

(2) shall readily display material gathered from oral testimony received pursuant to section 4(e)(2).

SEC. 7. GUIDANCE ON ISSUING VISAS.

To demonstrate the Department of State's commitment to ensuring fairness for current Department employees, not later than 100 days after the date of the enactment of this Act, the Secretary of State shall submit to Congress a report on countries not issuing spousal visas to the spouses of all Foreign Service personnel posted

overseas due to their sexual orientation, gender identity, or sex characteristics. Such report shall include any comments or recommendations for actions, including eliminating visa reciprocity with countries determined to be instituting such practices, that will lead to ensuring that all spouses of Foreign Service personnel receive spousal visas for the country to which their spouse is assigned, regardless of sexual orientation, gender identity, or sex characteristics.

SEC. 8. ESTABLISHMENT OF ADVANCEMENT BOARD.

(a) ESTABLISHMENT.—The Secretary of State shall establish, within the Office of the Director General of the Department of State, an Advancement Board comprised of senior-level officials to address issues faced by LGBTQI Foreign Service personnel and their families.

(b) HEARING OF TESTIMONY.—The Advancement Board established under subsection (a) shall hear testimony from any willing LGBTQI Foreign Service personnel and their families regarding any discrimination they have faced due to their sexual orientation, gender identity, or sex characteristics.

(c) REPORT.—

(1) IN GENERAL.—Not later than 100 days after completing the collection of testimony under subsection (b) and annually thereafter for five years,

the Advancement Board shall submit to Congress a report based on such testimony.

(2) CONTENT.—Each report required under paragraph (1) shall include any comments or recommendations included in the testimony referred to in such paragraph for continued actions to improve the Department of State to ensure that no Department employee or family member experiences discrimination due to the sexual orientation, gender identity, or sex characteristics of such employee.

(3) PRIVACY.—Each report required under paragraph (1) shall remain private and shall be accessible to only Members of Congress, their appropriate staff, and members of the Advancement Board.

SEC. 9. DEFINITIONS.

In this Act:

(1) GENDER IDENTITY.—The term ''gender identity'' means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

(2) LAVENDER SCARE.—The term ''Lavender Scare'' means any policy or action implemented by the Department of State between January 1, 1950,

and January 1, 1994, whether formal or informal, that led to the termination of Department employees or perpetuated discrimination against any such employees on the basis of sexual orientation, whether real or perceived.

(3) LGBTQI.—The term ''LGBTQI'' means lesbian, gay, bisexual, transgender, queer, or intersex.

(4) SEXUAL ORIENTATION.—The term ''sexual orientation'' means actual or perceived homosexuality, heterosexuality, or bisexuality.

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