

GOVERNMENT PROCEDURES AND OPERATIONS

# GENDER IDENTITY

INCLUSION, RIGHTS AND VICTIMIZATION

Sue J. Cronin

SNOVA



# Government Procedures and Operations



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**Sue J. Cronin**

Editor

# **Gender Identity**

**Inclusion, Rights and Victimization**



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### **Library of Congress Cataloging-in-Publication Data**

ISBN: ; 9; /: /: ; 335/272/2\*gDqqm#

*Published by Nova Science Publishers, Inc. † New York*

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# **Preface**

Sexual, gender, and physical diversity is a feature of every society, culture, and country in the world. Great strides have been made in advancing equality for all people, including those who identify as LGBTQI+, although there is still much work to be done. Violence, discrimination, stigma and criminalization still affect the lives of millions of LGBTQI+ people around the world.



# Chapter 1

## LGBTQI+ Data Inclusion Act\*

### Committee on Oversight and Reform

The amendments are as follows:

Strike all after the enacting clause and insert the following:

#### Section 1. Short Title

This Act may be cited as the “LGBTQI+ Data Inclusion Act.”

#### SEC. 2. Findings

The Congress finds the following:

- (1) (The National Academies on Sciences, Engineering, and Medicine (NASEM), in their 2022 report, found that complete and accurate demographic information on the LGBTQI+ community should be standardized and collected.
- (2) Comprehensive statistics are needed to inform public policy and Federal programs.
- (3) The availability of data also has a critical role in ensuring that any disparities in areas like health outcomes, housing, and employment can be addressed.

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\* This is an edited, reformatted and augmented version of House of Representatives Report Together with Minority Views, Publication No. 117–378, dated June 21, 2022.

In: Gender Identity

Editor: Sue J. Cronin

ISBN: 979-8-88697-868-1

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- (4) As of the March release of the NASEM report, limited Federal surveys collect data on sexual orientation and gender, with none currently measuring intersex populations.

### **Sec. 3. Requirement to Collect Data on Sexual Orientation, Gender Identity, and Variations in Sex Characteristics**

- (a) Survey Requirement. — Not later than 360 days after the date of the enactment of this Act, the head of any agency that collects information through a covered survey shall establish data standards that require, with regard to the survey, the following:
  - (1) Review.—The review of existing data sets to determine in which data sets information about sexual orientation, gender identity, and variations in sex characteristics is not included.
  - (2) Methods.—An identification of appropriate methods to include questions on sexual orientation, gender identity, and variations in sex characteristics in covered surveys that facilitate categorization and voluntary participation and preserve privacy and confidentiality.
  - (3) Data Collection.—The use of the appropriate methods identified in paragraph (2) to gather data on sexual orientation, gender identity, and variations in sex characteristics.
  - (4) Assessment.—The implementation of a process to routinely assess needed changes in covered survey methods related to asking questions on sexual orientation, gender identity, and variations in sex characteristics.
- (b) Data Reports; Waiver. —
  - (1) Data Reports.—Not later than 3 years after the date of the enactment of this Act, any report published by an agency that relies on covered survey demographic data shall include information on sexual orientation, gender identity, and variations in sex characteristics.
  - (2) Waiver.—The head of the statistical unit of an agency may waive the requirement under paragraph (1), on a case-by-case basis, if the standards and policies in subsection (c) can not be met.
- (c) Confidentiality.—Any information collected relating to the sexual orientation, gender identity, or variations in sex characteristics of a covered survey participant shall be maintained in accordance with applicable confidentiality and privacy laws, policies, and standards.
- (d) Applicability.—

- (1) Construction.—Nothing in this Act shall be construed to require an individual to disclose their sexual orientation, gender identity, or variations in sex characteristics to an agency.
- (2) Exemption From Penalty.—An individual is not subject to any fine or other penalty for refusing to answer any survey question regarding gender identity, sexual orientation, or variations in sex characteristics, including any fine or penalty under subchapter II of chapter 7 of title 13, United States Code.
- (e) Rule of Construction.—Nothing in this section shall be construed to permit the use of information collected under this section in a manner that would adversely affect any individual.
- (f) Definitions.—In this section:
  - (1) Agency.—The term “agency” has the meaning given that term in section 551 of title 5, United States Code.
  - (2) Covered Survey.—The term “covered survey” means a survey that includes demographic data in which—
    - (A) a subject self-reports information; or
    - (B) a knowledgeable proxy provides information about the subject or responds for all individuals in a household.
  - (3) Demographic Data.—The term “demographic data” means information about the race or ethnicity, sex, and age of a survey participant or population.
  - (4) Gender Identity.—The term “gender identity” means the gender-related identity, appearance, mannerism, or other gender-related characteristic of an individual, regardless of the designated sex at birth of the individual.
  - (5) Sexual Orientation.—The term “sexual orientation” means how a person identifies in terms of their emotional, romantic, or sexual attraction, and includes identification as straight, heterosexual, gay, lesbian, or bisexual, among other terms.
  - (6) Survey.—The term “survey” means a data collection activity involving observation or a questionnaire for a sample of a population and includes the decennial census.
  - (7) Variations in Sex Characteristics.—The term “variations in sex characteristics”—
    - (A) means a physical trait present at birth or naturally occurring at a later time (including genitals, gonads, hormone function, and chromosome patterns), that differ from normative expectations

for male or female bodies regarding the development, appearance, or function of sex-related characteristics; and (B) is sometimes referred to as intersex traits.

Amend the title so as to read:

A bill to improve Federal populations surveys by requiring the collection of voluntary, self-disclosed information on sexual orientation, gender identity, and variations in sex characteristics in certain surveys, and for other purposes.

## **Summary and Purpose of Legislation**

The LGBTQ Data Inclusion Act, H.R. 4176, would require federal agencies that collect demographic survey data to assess methods for incorporating questions about sexual orientation, gender identity (SOGI), and variations in sex characteristics into existing surveys within 360 days of enactment. The bill would also require any report published by an agency that relies on covered survey demographic data to include information on sexual orientation, gender identity, and variations in sex characteristics no later than three years after enactment.

Under the LGBTQI+ Data Inclusion Act, responses to inquiries regarding sexual orientation, gender identity, and variations in sex characteristics would be voluntary, and collected data would be subject to robust privacy and confidentiality standards.

## **Background and Need for Legislation**

Federal data collection informs a significant range of government functions and policies that affect the health, safety, and wellbeing of the entire United States population. Federal agencies that establish policies governing how people access health care, learn in classrooms, obtain stable housing, and navigate employment rely on data to set budgets and administer crucial programs.

Currently, more than 100 federal agencies engage in data collection, and no uniform policy requires the collection of data pertaining to LGBTQI+

people.<sup>1</sup> While some federal surveys collect data on LGBTQI+ populations, this information is frequently piecemeal and falls short of representing the full universe of LGBTQI+ communities.<sup>2</sup> For example, while the American Community Survey poses questions regarding the identification of cohabitating same-sex couples, these questions capture fewer than 1 in 6 LGBTQI+ people in the United States.<sup>3</sup>

According to a report released by the National Academies of Sciences, Engineering, and Medicine (NASEM), there is a significant gap in data collection for the LGBTQI+ community, which leads to a lack of programming and services for those within this community. There have been many changes within the LGBTQI+ community that have not been captured due to the lack of available data.<sup>4</sup> NASEM also reports that government agencies and others need to change their data collection systems to better capture the needs of the community. As a result of gaps in data collection, federal policymakers have a limited understanding of the specific needs of LGBTQI+ people—limiting the ability of the federal government to develop tailored policy solutions for LGBTQI+ communities that have historically experienced health and economic inequities. While data is limited, existing research demonstrates that LGBTQI+ people experience disproportionate rates of poverty, unemployment, economic instability, housing insecurity, adverse mental and physical health outcomes, and discrimination.<sup>5</sup> These

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<sup>1</sup> Letter from David Stacy, Government Affairs Director, Human Rights Campaign, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (June 14, 2022).

<sup>2</sup> Letter from Center for American Progress et al. to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Congressman Ral Grijalva (June 14, 2022).

<sup>3</sup> Center for American Progress, *Collecting Data About LGBTQI+ and Other Sexual and Gender-Diverse Communities* (May 24, 2022) (online at [www.americanprogress.org/article/collecting-data-about-lgbtqi-and-other-sexual-and-gender-diverse-communities/](http://www.americanprogress.org/article/collecting-data-about-lgbtqi-and-other-sexual-and-gender-diverse-communities/)).

<sup>4</sup> National Academies of Sciences, Engineering, and Medicine, *New Report Calls for More Comprehensive Data on LGBTQI+ Well-Being* (Oct. 2020) (online at [www.nationalacademies.org/news/2020/10/new-report-calls-for-more-comprehensive-data-on-lgbtqi-well-being](http://www.nationalacademies.org/news/2020/10/new-report-calls-for-more-comprehensive-data-on-lgbtqi-well-being)).

<sup>5</sup> Williams Institute, *LGBT Poverty in the United States: A Study of Differences Between Sexual Orientation and Gender Identity Groups* (Oct. 2019) (online at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>); National Academies of Science, Engineering, and Medicine, *Understanding the Well-Being of LGBTQI+ Populations* (2020) (online at <https://nap.nationalacademies.org/read/25877/chapter/1>); Williams Institute, *LGBT People and Housing Affordability, Discrimination, and Homelessness* (Apr. 2020) (online at <https://williamsinstitute.law.ucla.edu/publications/lgbt-housing-instability/>); Laetitia Zeeman and Kay Aranda, *A Systematic Review of the Health and Healthcare Inequalities for People with Intersex Variance*, *International Journal of Environmental Research and Public Health* (2020); Center for American Progress, *The State of the LGBTQ Community*

inequities are even more significant for LGBTQI+ people of color, LGBTQI+ people with disabilities, and LGBTQI+ older adults.<sup>6</sup>

The LGBTQI+ Data Inclusion Act would establish a uniform requirement for all federal data collection agencies to determine and implement methods for collecting data pertaining to LGBTQI+ populations in their surveys. By facilitating the collection of voluntary, self-disclosed demographic data on sexual orientation, gender identity, and variations in sex characteristics, the bill would equip policymakers with the tools necessary to understand and address specific challenges that LGBTQI+ people face.

The LGBTQI+ Data Inclusion Act strikes a balance between mandatory inclusion of data pertaining to sexual orientation, gender identity, and variations in sex characteristics, while making questions non-mandatory for respondents and preserving privacy and confidentiality standards necessary to prevent personal identification of any individual. The bill would also establish a waiver process for the heads of statistical units at agencies with data collection responsibilities to waive the requirements on a case-by-case basis.

## Section-by-Section Analysis

### Section 1. Short Title

The short title is the “LGBTQI+ Data Inclusion Act.”

### *Sec. 2. Findings*

The National Academies of Sciences, Engineering, and Medicine reported that complete and accurate demographic data on LGBTQI+ individuals should be standardized and collected because comprehensive statistics are needed to

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in 2020: A National Public Opinion Study (Oct. 26, 2021) (online at [www.americanprogress.org/article/state-lgbtq-community-2020/](http://www.americanprogress.org/article/state-lgbtq-community-2020/)).

<sup>6</sup> Center for American Progress, *LGBTQ People of Color Encounter Heightened Discrimination* (June 24, 2021) (online at [www.americanprogress.org/article/lgbtq-people-color-encounter-heightened-discrimination/](http://www.americanprogress.org/article/lgbtq-people-color-encounter-heightened-discrimination/)); Center for American Progress, *The United States Must Advance Economic Security for Disabled LGBTQI+ Workers* (Nov. 3, 2021) (online at [www.americanprogress.org/article/united-states-must-advance-economic-security-disabled-lgbtqi-workers/](http://www.americanprogress.org/article/united-states-must-advance-economic-security-disabled-lgbtqi-workers/)); Center for American Progress, *Protecting and Advancing Health Care for Transgender Adult Communities* (Aug. 18, 2021) (online at [www.americanprogress.org/article/protecting-advancing-health-care-transgender-adult-communities/](http://www.americanprogress.org/article/protecting-advancing-health-care-transgender-adult-communities/)).



inform public policy and federal programs. Data availability is important in ensuring that disparities can be addressed. There are limited federal surveys that collect data on sexual orientation and gender, with none measuring intersex populations.

***Sec. 3. Requirement to Collect Data on Sexual Orientation, Gender Identity, and Variations in Sex Characteristics***

- a) *Survey Requirement.* This subsection would require agencies to review existing data sets within one year of enactment to determine where information on sexual orientation, gender identity, and variations in sex characteristics are not included. Agencies would then be required to identify and employ appropriate methods to include questions on sexual orientation, gender identity, and variations in sex characteristics in covered surveys that allow for voluntary participation and protect privacy and confidentiality. Agencies would also be required to routinely assess needed changes in their data collection methods.
- b) *Data Reports; Waiver.* This subsection would require that information on sexual orientation, gender identity, and variations in sex characteristics must be included in any report released by an agency that relies on covered survey demographic data must include no later than three years after the enactment. On a case-by-case basis, the head of the statistical unit of an agency would be permitted to waive the report requirement if privacy and confidentiality standards could not be met.
- c) *Confidentiality.* This subsection would ensure that any information collected regarding the sexual orientation, gender identity, or variations in sex characteristics of a respondent would be maintained in accordance with applicable confidentiality and privacy laws, policies, and standards.
- d) *Applicability.* This subsection clarifies that individuals are not required to disclose their sexual orientation, gender identity, or variations in sex characteristics and will not face any penalties, including fines, for choosing not to answer any survey questions related to their sexual orientation, gender identity, or variations in sex characteristics.

- e) *Rule of Construction.* The data collected using these surveys would not be used in a way that would adversely impact the participant or any individual.
- f) *Definitions.* This section defines specific terms within the bill as follows:

Agency is defined as each authority of the government of the United States, whether or not it is subject to review by another agency;

Covered survey means a survey that includes demographic data that is self-reported or provided by a knowledgeable proxy;

Demographic data is defined as information about the race or ethnicity, sex, and age of a survey participant or population;

Gender identity means the gender-related identity, appearance, mannerism, or other gender-related characteristic of an individual, regardless of an individual's designated sex at birth;

Sexual orientation is defined as how an individual identifies regarding their emotional, romantic, or sexual attraction, and includes identification as straight, heterosexual, gay, lesbian, or bisexual, among other terms.

Survey, means data collection involving observation or a questionnaire for a sample of a population including the decennial census;

Variations in sex characteristics is defined as a physical trait present at birth or naturally occurring later in life, that differ from normative expectations for male or female bodies regarding the development, appearance, or function of sex-related characteristics.

## **Legislative History**

Representative Grijalva introduced H.R. 4176, the LGBTQ Data Inclusion Act, on June 25, 2021. The bill was referred to the Committee on Oversight and Reform. Senator Baldwin introduced the Senate companion bill (S. 2287) which was referred to the Committee on Homeland Security and Governmental Affairs.

## Committee Consideration

On June 14, 2022, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported by a roll call vote of 23 ayes and 16 noes.

## Roll Call Votes

There were five roll call votes during consideration of H.R. 4176 on the following measures:

### COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

ROLL CALL

Vote on: Rep. Biggs Amendment to ANS to H.R. 4176, The LGBTQ+ Data Inclusion Act

Date: 6-14-22

VOTE #: 1

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)		X		MR. HIGGINS (LA)	X		
MR. MFUME (MD)		X		MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)			
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 16 Nays: 24 Present:

Passed: \_\_\_\_\_

Failed: \_\_\_X\_\_\_

(REVISED 1-25-2022)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

## ROLL CALL

Vote on: Rep. Cloud #1 Amendment to the ANS to H.R. 4176, the LGBTQ+ Data Inclusion Act

Date: 6-14-22

VOTE #: 2

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)				MR. HIGGINS (LA)	X		
MR. MFUME (MD)				MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)			
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 16 Nays: 22 Present:

Passed: \_\_\_\_\_

Failed: \_\_\_X\_\_\_

(REVISED 1-25-2022)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

ROLL CALL

Vote on: Rep. Cloud #2 Amendment to the ANS to H.R. 4176, the LGBTQI+ Data Inclusion Act

Date: 6-14-22

VOTE #: 3

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)				MR. HIGGINS (LA)	X		
MR. MFUME (MD)		X		MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)			
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 16 Nays: 23 Present:

Passed: \_\_\_\_\_

Failed: \_\_\_\_X\_\_\_\_

(REVISED 1-25-2022)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

## ROLL CALL

Vote on: Rep. Grothman Amendment the ANS to H.R. 4176, the LGBTQ+ Data Inclusion Act

Date: 6-14-22

VOTE #: 4

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)				MR. HIGGINS (LA)	X		
MR. MFUME (MD)		X		MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)			
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 16 Nays: 23 Present:

Passed: \_\_\_\_\_

Failed: \_\_\_X\_\_\_

(REVISED 1-25-2022)