115th Congress 1st Session

S._____

To direct the Secretary of State to review the termination characterization of former members of the Department of State who were fired by reason of the sexual orientation of the official, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Cardin (for himself, Mr. Markey, Mr. Merkley, Mr. Van Hollen, Mr. Schatz, Mr. Booker, Mr. Kaine, Ms. Baldwin, Mr. Coons, Mr. Whitehouse, Mr. Blumenthal, Mrs. Gillibrand, Mrs. Shaheen, Mr. Wyden, Mrs. Feinstein, Mr. Murphy, and Mrs. Murray) introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To direct the Secretary of State to review the termination characterization of former members of the Department of State who were fired by reason of the sexual orientation of the official, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 2 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Lavender Offense Victim Exoneration Act of 2017” or the “LOVE Act of 6 2017”. 
1. **SEC. 2. FINDINGS.**

2. Congress makes the following findings:

3. (1) During 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.

4. (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.

5. (3) In addition to those wrongfully dismissed, 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”.

6. (4) Congress bears a special measure of responsibility for the "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 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 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.”.

SEC. 3. DIRECTOR GENERAL REVIEW.

(a) REVIEW.—The Director General of the Foreign Service and Director of Human Resources of the Department of State, in consultation with the Historian of the Department of State, shall review all employee terminations that occurred after January 1, 1950, to determine who was wrongfully terminated owing to their sexual orientation, whether real or perceived.

(b) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Director General shall, consistent with applicable privacy regulations, compile the information compiled under subsection (a) in a publicly available report. The report shall include historical statements made by officials of the Department of State and Congress encouraging and implementing policies and tactics that led to the termination of employees due to their sexual orientation.

SEC. 4. REPORTS ON REVIEWS.

(a) REVIEWS.—The Secretary of State shall conduct reviews of the consistency and uniformity of the reviews conducted by the Director General under section 3.
(b) REPORTS.—Not later than 270 days after the date of the enactment of this Act, and annually thereafter for 2 years, the Secretary shall submit to Congress a report on the reviews conducted under section 3. Each report shall include any comments or recommendations for continued actions.

SEC. 5. ESTABLISHMENT OF RECONCILIATION BOARD.

(a) ESTABLISHMENT.—The Secretary of State shall establish, within the Office of Civil Rights of the Department of State, an independent Reconciliation Board to review the reports released by the Director General of the Foreign Service and Director of Human Services under section 3(b).

(b) DUTIES.—The Reconciliation Board shall—

(1) consistent with applicable privacy regulations, contact all employees found to be fired due to the "Lavender Scare" or, in the case of deceased former employees, the family members of the employees, to inform them that their termination from the Department of State has been deemed inappropriate and that, if they wish, their employment record can be changed to reflect these findings;

(2) designate a point of contact at a senior level position within the Office of the Director General of the Foreign Service and Director of Human Re-
sources to receive oral testimony of any employees or
family members of deceased employees mentioned in
the report who personally experienced discrimination
and termination because of the actual or perceived
sexual orientation in order that such testimony may
serve as an official record of these discriminatory
policies and their impact on United States lives; and

(3) provide an opportunity for any former em-
ployee not mentioned in the report to bring forth a
grievance to the Board if they believe they were ter-
minated due to their sexual orientation.

(c) REVIEW OF CLAIMS.—

(1) IN GENERAL.—The Board shall review each
claim described in subsection (b) within 150 days of
receiving the claim. Lack of paperwork may not be
used as a basis for dismissing any claims.

(2) COOPERATION.—The Department of State
shall be responsible for producing pertinent informa-
tion regarding each claim to prove the employee was
not wrongfully terminated.

(d) TERMINATION.—The Board shall terminate 5
years after the date of the enactment of this Act.

SEC. 6. 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 otherwise placed on the Department of State through the appropriations process.

SEC. 7. ESTABLISHMENT OF PERMANENT EXHIBIT ON THE LAVENDER SCARE.

(a) IN GENERAL.—The Secretary of State shall work with the current public-private partnership associated with the Department of State's new United States Diplomacy Center to establish a permanent exhibit on the "Lavender Scare" in the museum to assure that the history of this unfortunate episode is not brushed aside.

(b) SPECIFICATIONS.—The exhibit—

(1) shall be installed at the museum not later than one year after the date of enactment of this Act;

(2) should provide access to the reports compiled by the Director General of the Foreign Service and Director of Human Resources under section 3(b); and
(3) shall readily display material gathered from oral testimony received pursuant to section 5(b)(2) from employees or family members of deceased employees who were subject to these discriminatory policies during the "Lavender Scare".

SEC. 8. GUIDANCE ON ISSUING VISAS.

To demonstrate the Department of State's commitment to ensuring fairness for current 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 visas to the spouses of all Foreign Service personnel posted overseas due to their sexual orientation. This report shall include any comments or recommendations for actions, including eliminating visa reciprocity with countries found to be instituting these practices against the spouses of Foreign Service personnel, that will lead to ensuring that all spouses of Foreign Service personnel receive visas for the country their spouse is assigned, regardless of sexual orientation.

SEC. 9. ESTABLISHMENT OF ADVANCEMENT BOARD.

(a) Establishment.—The Secretary of State shall establish, within the Office of the Director General of the Department of State, a board comprised of senior-level officials to address the issues faced by LGBTQI Foreign Service employees and their families.
(b) HEARING OF TESTIMONY.—The Advancement Board shall hear testimony from any willing LGBTQI Foreign Service employees and their families regarding any discrimination they have faced due to their sexual orientation.

(c) REPORT.—

(1) IN GENERAL.—Not later than 100 days after completing collection of testimony described under subsection (b), and annually thereafter for 5 years, the Advancement Board shall submit to Congress a report based on the testimony.

(2) CONTENT.—The report required under paragraph (1) shall include any comments or recommendations for continued actions to improve the Department of State to ensure that no employee or their family members experience discrimination due to their sexual orientation.

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