

May 7, 2019

United States House of Representatives
Washington, DC 20515

Re: The Equality Act (H.R. 5)

Dear Representatives:

We represent religious denominations, schools, and charities that comprise over 100 million Americans and serve many millions more. We write to you to express grave concern over the devastating consequences to religious freedom that will occur if the Equality Act as currently drafted becomes law.

Many of us have concerns about the Equality Act beyond those outlined here. However, our focus in this letter is on implications of the Equality Act for the religious freedom of all Americans. If passed as currently drafted, the Equality Act would devastate the core ministries of a wide range of religious groups, especially those ministries that serve the most vulnerable and that help form members of our faiths to serve the common good.

Houses of Worship and Other Religious Spaces Will Be Turned into Places of “Public Accommodation”

Public accommodations provisions in federal and state civil rights laws were originally designed to ensure all citizens—particularly African-Americans systematically denied equality—access to basic goods and services. The Equality Act dramatically expands the meaning of “public accommodations” far beyond the original definition in the Civil Rights Act. Its new definition raises serious questions about whether churches, synagogues, mosques, and other houses of worship will now be legally defined as public accommodations and subject to governmental regulations prohibiting practices core to their religious identities.

While Equality Act proponents claim that the bill’s term “places of... public gathering” combined with Title II’s existing exemption for “private clubs” will protect houses of worship, that is far from clear. (The uncertainty that arises from this ambiguity is highlighted when one compares this language to the religious exemption Congress enacted in the Americans with Disabilities Act.) Moreover, many houses of worship also provide online services and programs, and house food pantries or homeless shelters. On its face, the Equality Act

defines such churches as places of public accommodation by virtue of providing these services.

Importantly, the Equality Act goes far beyond any state law. Most of these laws make clear that engaging in such charitable and expressive activities does not force religious spaces “to throw open their doors” to activities (such as same-sex marriages) that violate their religious teachings. The Equality Act will thus directly threaten the existence of core religious institutions.

Federal Funds Will Be Denied to Thousands of Houses of Worship, Schools, and Charities That Currently Receive Them

The Equality Act amends Title VI of the Civil Rights Act so that any recipient of *any* federal funds, even a small amount for a subsidiary service that may have nothing to do with sexuality, may not discriminate on the basis of sexual orientation or gender identity anywhere in its operations, including in services that are privately funded. Remarkably, this federal funding provision sweeps many houses of worship, religious schools and other institutions into the Act’s prohibitions. By way of example, this includes thousands of Catholic, Jewish and other parochial schools with students who participate in the National School Lunch Program, which helps poor children whose families have selected these specific religious schools; hundreds of synagogues, parochial schools, and other entities that receive funds to enhance their security against terror threats under the Nonprofit Security Grant Program; scores of houses of worship and other entities that receive federal disaster aid from FEMA; and numerous other entities that receive historic preservation grants.

It is as if, suddenly, houses of worship, religious schools, and religious charities that serve their own distinctive religious communities, and who offer to the general public distinctive services valued by all those who choose them, have become pariahs that must be marginalized as entities unworthy of a place in the public square. For some religious organizations, losing their eligibility to partner with the federal government will suppress their ability to serve vulnerable people. For others, the loss of these funds would effect such a sudden and sweeping change to their institutional arrangements that it would threaten their very existence.

These religious organizations no doubt would engage in litigation in an effort to protect their existence. Yet, with the Religious Freedom Restoration Act (RFRA) no longer available for their defense, -- having been expressly excluded from

application to the Equality Act, the first law ever to do so -- these lawsuits would have little chance of success.

Religious Adoption and Foster Care Providers Would Be Devastated, Harming Innocent Children and Families

The loss of federal funds would fall particularly hard on religiously organized charities that provide adoption and foster care services, and the children whom they serve. At a time when the opioid crisis and other social challenges make expansion of involvement by religious families and agencies more urgent than ever, the Equality Act would hamper participation by many Americans. There is no reason that diverse families and diverse providers cannot all serve side by side in the great cause of providing homes for vulnerable children. This is such a radical result; all but a handful of U.S. states and cities have refused to take this step.

Many Privately Funded Shelters for the Homeless and Victims of Domestic Violence Would Be Rendered Illegal, Ripping a Hole in the Social Safety Net

In most communities, religious congregations or charities provide the majority of privately funded emergency shelter beds. They serve those in need on a nonsectarian basis, while remaining faithful to the religious beliefs that motivate their service. The Equality Act makes no provision for protecting these religious groups from federal mandates that might force them to violate their beliefs or close their doors. In the long run, this will increase the financial burden on taxpayers who will have to pay for additional government-run services.

Core Rights Would Be Stripped from Religious Colleges and Universities

Religious colleges and universities with views and practices around marriage, sexuality, and gender at odds with the Equality Act educate hundreds of thousands of students, employ tens of thousands, and are valued by countless more alumni, financial supporters and the local communities where these institutions are located. The Equality Act threatens the ability of these colleges and universities — diverse institutions that help tens of thousands of students from minority communities to thrive academically — to hire staff that uphold their religious mission, in defiance of long explicit and judicially approved protections in the Civil Rights Act.

The Equality Act also threatens the withdrawal of financial aid like Pell grants to the neediest students and federal research grants to any religious educational

institution. Religious colleges and universities would be forced to abandon their core religious principles or scale back their operations dramatically, to the point where no religious institution could continue operating as a major research university. For others, the loss of federal student aid would make college unaffordable, leading to a decline in enrollment and forcing some schools to close their doors. No state, however committed to LGBT rights, has enacted its policy aims to these punitive extremes.

Moreover, with regard to religious schools, it is important to note that the Equality Act does not amend Title IX of the Education Amendments of 1972, which limits discrimination on the basis of sex in educational institutions that receive federal funds. Title IX contains a clear religious exemption for religious schools if compliance with Title IX would violate the school's religious tenets. Absent a parallel provision in the Equality Act's amendment to Title VI of the Civil Rights Act, it is likely that religious schools will be compelled to violate their religious tenets.

Houses of Worship, Religious Charities, and Religious Individuals Will Lose the Protection of the Religious Freedom Restoration Act (RFRA)

In the aftermath of the U.S. Supreme Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), which severely curtailed the protections of religious liberty under the First Amendment, the Religious Freedom Restoration Act is the most important federal statute protecting religious freedom. No federal law enacted since RFRA's nearly unanimous passage in 1993 has exempted itself from its protections. The Equality Act would be infamous for becoming the first, setting a precedent that would lead to many other efforts to exempt statutes from RFRA, which will ultimately result in its demise.

RFRA's very design to balance rights, attested to by a generation of litigation in federal courts, demonstrates that RFRA offers no guarantee of victory for religious claimants. On the other hand, scholars on all sides overwhelmingly testify that the absence of RFRA virtually guarantees that religious claimants will lose under current Free Exercise Clause jurisprudence, because the Equality Act is likely to be found a "neutral and generally applicable law." Because Congress has been thoroughly apprised that the Equality Act would outlaw many practices regarded as religiously obligatory by many religious organizations and persons, Congress should provide that religious adherents should sometimes win in defending those practices, not always lose.

The Equality Act, lacking adequate religious accommodations, will declare many existing faith-based practices to constitute illegal discrimination— while it simultaneously blocks the ability of religious people and organizations to appeal to RFRA’s balancing test to vindicate their freedom to live faithfully in accordance with their religious convictions about marriage, sexuality, and gender identity. Once again, this policy mix is radical when compared to the balances struck by similar state laws. Every similar state law contains explicit religious exemptions, and every state that changed its marriage laws legislatively added additional religious protections. No state with a Religious Freedom Restoration Act and LGBT civil rights protections exempts the latter from the former.

Religious Individuals Would Be Forced to Take Part in Weddings and Funerals that Violate Their Religious Beliefs

Under current federal law, most religious small business owners do not meet the definition of a “public accommodation.” The Equality Act dramatically expands the kinds of establishments deemed public accommodations even as it expands the kinds of actions that will be deemed illegal discrimination.

These problems do not apply just to high-profile wedding-related cases. Many Jewish funeral parlors only provide funeral services to members of the Jewish faith. The Equality Act’s explicit inclusion of “funeral parlors” as public accommodations violates a religious freedom all of us believe the law should recognize. Many state laws define religious funeral homes and cemeteries as outside of the definition of public accommodations. Once again, the Equality Act provides no religious accommodation.

Conclusion

In sum, the Equality Act regulates a huge new swath of religious activity and facilities as “public accommodations” and transforms the conditions by which hundreds of thousands of faith-based entities partner with the federal government to serve the common good. It accomplishes these goals while bringing the daunting power of the federal government to bear against religious people and groups with non-conforming views about marriage, sexuality, and gender. And it does so while stripping them of the protections of RFRA, the federal law passed precisely to protect religious people and groups with minority views. Similarly, the Equality Act omits any religious exemption whatsoever, outstripping in its radicalism even the most aggressive state

analogue, and decades of versions of its predecessor, the Employment Nondiscrimination Act (ENDA).

These religious freedom concerns are not hypothetical or academic. The Equality Act undercuts the religious freedom of millions of Americans who live out their faith by serving others through religiously motivated charitable ministries and organizations. As you deliberate the Equality Act, we ask that you lend these concerns the weight they are due in a nation committed to religious liberty.

Sincerely,

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