

March 16, 2021

The Honorable Richard Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

We are leaders of faith-based organizations representing tens of millions of Americans. We reiterate our respective organizations' support for equality and fairness.

We could support legislation that provides federal protections for LGBT persons as well as people and institutions of faith. Both are possible and clearly needed in a just society.

Legislation that is balanced, fair, and unifying can be achieved.

We have attached letters and statements from our organizations that elaborate on these points.

Sincerely,

Justin E. Giboney, Esq.  
President  
AND Campaign

Stephanie Summers  
CEO  
Center for Public Justice

Lance Walker  
Director of Public and International Affairs  
The Church of Jesus Christ of Latter-day Saints

Shirley Hoogstra  
President  
Council for Christian Colleges & Universities

Stanley Carlson-Thies  
Senior Director  
Institutional Religious Freedom Alliance

Walter Kim  
President  
National Association of Evangelicals

Melissa Reid  
Director of Government Affairs  
Seventh-day Adventist Church - North American Division

Nathan J. Diament  
Executive Director for Public Policy  
Union of Orthodox Jewish Congregations of America

cc: Members of the Senate Committee on the Judiciary



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Dear Chairman Durbin and Ranking Member Grassley:

We are writing to express our support and appreciation for the efforts to more fully provide the LGBT community with civil and human rights protections. For far too long, this community has endured mistreatment in American society, including within parts of the church. We regret and lament our collective misdeeds and omissions in that regard. While we maintain the historic Christian sexual ethic, we want to clearly state our support for federal protections for LGBT persons in employment, housing and the like. We're committed to embracing and advocating for those safeguards.

Unfortunately, the collaborative process and substance of the Equality Act fall well beneath the standard necessary to cultivate a healthy pluralistic society. While we support certain provisions, the legislation, on the whole, is not the product of a thoughtful and healthy civic dialogue or a transparent policy-making process. It was not discussed in detail with a diverse set of faith leaders who'll bear the brunt of its excesses and who worked hard to elect you and President Joe Biden. It's a danger not just to Christian institutions, but those belonging to our Jewish, Sikh, Buddhist, and Muslim neighbors as well. We can defend the rights of the LGBT community without threatening religious communities.

The Equality Act is a reflection of our broken system, not an example of the civic spirit and good faith measures necessary to heal it. It would remove many of the basic rights that allow religious organizations to operate according to the tenets of their faith. It would allow LGBT rights to be used as a sword against faith institutions rather than a shield to protect the vulnerable. In addition to failing to offer religious protections to religious institutions, the Equality Act would likely:

- Revoke federal security, disaster relief, and school lunch money from thousands of religious schools.
- End federal partnerships with thousands of faith-based programs that serve the most vulnerable.



- Revoke the Pell Grant and federal loan eligibility for tens of thousands of students that attend hundreds of religious colleges.
- Convert houses of worship and other religious properties into public accommodations, enmeshing them in constant litigation.

The Fairness for All Act is a much more thoughtful and just way to protect our LGBT neighbors. It's a product of the faith community and the LGBT community coming together and challenging themselves to find ways to co-exist and to promote tolerance. It's proof that religious liberty and LGBT rights are not mutually exclusive. We should, and can, have both. Black and Brown Christians worked too hard for the Civil Rights Act to have it revised in ways that would take away basic rights and funding from our communities. The Equality Act needlessly pits the concerns of diverse communities against each other.

We, therefore, call upon you to support the Fairness for All Act and allow for a full debate and vote on the legislation.

Sincerely,

Bishop Claude Alexander  
The Park Church  
Charlotte, NC

Chantelle Anderson  
Former WNBA Player  
San Diego, CA

Pastor Cornelius Atkinson  
Wilson Heights First Church of God  
Charlotte, NC

A.R. Bernard  
Christian Cultural Center  
Brooklyn, NY

Dr. Steve Bland, Jr.  
Pastor Liberty Hill Baptist Church  
Detroit, Michigan

Bishop John Richard Bryant  
African Methodist Episcopal Church  
Baltimore, MD

Pastor Christopher Butler  
Chicago Embassy Church Network  
Chicago, IL



Pastor Bryan Carter  
Concord Church  
Dallas, TX

Bishop Timothy J. Clarke  
First Church of God  
Columbus, OH

Dr. Joseph A. Conner, Sr,  
Pastor of New Beginnings Sanctuary of Praise Church of God in Christ  
Philadelphia, PA

Dr. K. Edward Copeland  
New Zion Baptist Church  
Rockford, IL

Dr. Marcus D. Cosby  
Wheeler Avenue Baptist Church  
Houston, TX

Dr. William Curtis  
Pastor of Mt Ararat Baptist Church  
Pittsburgh, PA

Dr. Charlie Dates  
Progressive Baptist Church  
Chicago, IL

Pastor Robert A. Davis  
Celebration Church  
Columbia, MD

Bishop Dwayne Debnam  
Morning Star Baptist Church  
Gwynn Oak, MD

Dr. Elaine Flake  
Co Pastor of The Greater Allen Cathedral AME Church  
New York City, NY

Lisa Fields  
The Jude 3 Project  
Jacksonville, FL



Justin E. Giboney, Esq.  
AND Campaign  
Atlanta, GA

Dr. Cynthia Hale  
Ray of Hope Christian Church  
Decatur, GA

Dr. Charley Hames, Jr.  
Beebe Memorial CME Church  
Oakland, CA

Bishop Tejado Hanchell  
Mount Calvary Holy Church of America  
Winston-Salem, NC

Pastor Oshebar Hardman  
2nd Mt. Vernon Baptist Church  
Atlanta, GA

Pastor Marlin Harris  
New Life Church  
Decatur, GA

Bishop Walter F. Harvey  
National Black Fellowship of The Assemblies of God (President)  
Milwaukee, MN

Dr. Michael L. Henderson  
New Beginnings Church  
Matthews, NC

Dr. John Jenkins  
First Baptist Church of Glenarden  
Upper Marlboro, MD

Pastor Jeffrey Johnson  
Eastern Star Church  
Indianapolis, IN

Ambassador Suzan Johnson-Cook  
Former U.S. Ambassador-at-Large for International Religious Freedom  
New York City, NY



Nona Jones  
Faith and Prejudice  
Gainesville, FL

Pastor Watson Jones  
Compassion Baptist Church  
Chicago, IL

Sarita Lyons  
Epiphany Fellowship  
Philadelphia, PA

Rev. Dr. Nicole Martin  
American Bible Society  
Philadelphia, PA

Rev. James T. Meek  
Salem Baptist Church  
Chicago, IL

Dr. Esau McCaulley  
AND Campaign  
Wheaton, IL

Dr. Ralph McCormick  
Pastor of Second Calvary Baptist Church  
Charlotte, NC

Pastor James Meeks  
Salem Baptist Church  
Chicago, IL

Bishop Brian D. Moore  
Pastor of Life Center Fellowship  
Charleston, SC

Bishop Edward Peecher  
Chicago Embassy Church Network  
Chicago, IL

Kori Porter  
CSW USA  
Princeton, NJ



Bishop Franklin M. Reid  
African Methodist Episcopal Church  
Baltimore, MD

Dr. CJ Rhodes  
Mt. Helm Baptist Church  
Jackson, MS

Dr. Jacqueline Rivers  
Seymour Institute  
Boston, MA

Dr. J. Elvin Sadler  
General Secretary-Auditor  
AME Zion Church

Bishop Thomas Scott  
Florida State Association of Church of God  
Tampa, FL

Dr. Robert Charles Scott  
Pastor of St. Paul Baptist Church  
Charlotte, NC

Bishop Horace Smith  
Pastor of Apostolic Faith Church  
Chicago, IL

Dr. DeForest B. Soaries, Jr.  
Pastor of First Baptist Church of Lincoln Gardens  
Somerset, NJ

Dr. Warren H. Stewart  
First Institutional Baptist Church  
Phoenix, AZ

Rondell Trevino  
The Immigration Coalition  
Austin, TX

Bishop Joseph W. Walker III  
Pastor of Mt. Zion Baptist Church  
Nashville, TN





Dr. Dwayne A. Walker  
Pastor of Little Rock AME Zion Church  
Charlotte, NC

Dr. Alyn Waller  
Pastor of Enon Tabernacle Baptist Church  
Philadelphia, PA

Dr. Howard Timothy Washington  
Baptist Pastor Conference  
Columbus, OH

Benjamin Watson  
Former NFL Player  
Boston, MA

Dr. Maurice Watson  
Metropolitan Baptist Church  
Largo, MD

Dr. Barbara Williams-Skinner  
Skinner Leadership Institute  
Washington, D.C.

cc: Members of the United States Senate Committee on the Judiciary



THE CENTER FOR  
PUBLIC JUSTICE

March 15, 2021

The Honorable Dick Durbin  
Chairman  
U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington DC 20510

The Honorable Chuck Grassley  
Ranking Member  
U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington DC 20510

Dear Senator Durbin and Senator Grassley,

We support changing federal civil rights law to secure civil rights protections for LGBTQ people throughout our nation. However, as written, the Equality Act would achieve this important goal while grievously--and unnecessarily--undermining the rights and freedoms of many citizens. We believe a pluralist approach is the best way to ensure all citizens and organizations retain their rights and freedoms, regardless of their core convictions, identities, and values.

Legislators must significantly amend the Equality Act before Congress sends it to the President. Faith-based organizations of all kinds—houses of worship, religious charities, religious schools and colleges, faith-based health care providers, faith-shaped companies— and the individuals they serve are our focus here. These organizations, and participation in them, is a constitutionally protected exercise of religion. And their existence as distinctively religious organizations is vastly important in society as they serve the communities around them and shape their members to serve the common good.

Core elements of the Equality Act as currently drafted would severely damage faith-based organizations. Most egregiously, the Equality Act as drafted would, for the first time, shrink the protective scope of the Religious Freedom Restoration Act. RFRA is the premier statutory protection for the religious freedoms guaranteed by the First Amendment and was passed with near-unanimity by Congress and signed into law by President Bill Clinton to great acclaim in 1993. The proposed gutting of RFRA would deny persons and organizations who are living out their religious beliefs but are charged with illegal discrimination any right to a defense to ask a court to balance the several important conflicting rights. The Equality Act as currently drafted also diverges sharply from the balances struck by similar state laws.

The Equality Act as currently drafted reclassifies houses of worship as public accommodations, subjecting them to requirements that may violate their core religious beliefs. Religious schools whose students participate in the National School Lunch Program will no longer be eligible to receive meals. Federal funding for the Nonprofit Security Grant Program will be denied for hundreds of synagogues, mosques, and religious schools that receive funds to enhance security against terror threats. Federal disaster aid from FEMA will be denied to houses of worship.

Faith-based adoption and foster care providers committed to traditional marriage will be excluded from federal funding and may lose their ability to serve families who seek them out on the basis of shared values--at a time when we need more providers in our diverse society, not fewer. Many homeless or domestic violence shelters, even the privately funded, may be compelled to close their doors because of the bill's requirements. Religious colleges and universities with beliefs and values concerning human sexuality that differ from the Equality Act as currently drafted will lose the freedom to hire staff and faculty consistent with those beliefs and their students will lose access to government aid, including Pell grants. It is important to note that no state law protecting LGBTQ rights has curtailed religious freedom to the extent that would occur by the Equality Act as currently written.

These and other detrimental consequences—restrictions on institutional and religious freedom, constricting the freedom to serve of many religious people and organizations—are avoidable and must be avoided.

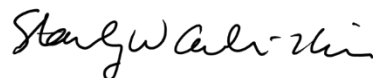
Congress should consider the Fairness for All Act, which expands LGBTQ rights while broadly protecting religious freedom. The Fairness for All Act shows how to expand federal civil rights laws to protect LGBTQ persons and religious freedom and faith-based organizations simultaneously. Modifying the Equality Act to align with the pluralist goals and provisions of the Fairness for All Act would recognize and protect the important rights and freedoms of LGBTQ persons and also religious persons and organizations.

We welcome the opportunity for further discussion.

Sincerely,



Stephanie Summers  
CEO  
Center for Public Justice



Stanley Carlson-Thies  
Founder and Senior Director  
Institutional Religious Freedom Alliance

THE CHURCH OF  
JESUS CHRIST  
OF LATTER-DAY SAINTS

Public and International Affairs  
2520 L Street NW, Suite 200  
Washington, D.C. 20037-1616

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Dear Chairman Durbin and Ranking Member Grassley:

The Church of Jesus Christ of Latter-day Saints is deeply concerned that the ongoing conflicts between religious liberty and LGBT rights are poisoning our civil discourse, eroding the free exercise of religion and preventing diverse Americans of good will from living together in respect and peace. Lawmakers across the nation, including members of Congress, are working to enact or strengthen laws that ensure LGBT persons fair access to important rights, such as nondiscrimination in areas like housing, employment and appropriate public accommodations. The Church is on record favoring reasonable measures that secure such rights.

At the same time, we urgently need laws that protect the rights of individuals and faith communities to freely gather, speak out publicly, serve faithfully and live openly according to their religious beliefs without discrimination or retaliation, even when those beliefs may be unpopular. This includes the right of religious organizations and religious schools to establish faith-based employment and admissions standards and to preserve the religious nature of their activities and properties.

This does not represent a change or shift in Church doctrine regarding marriage or chastity. It does represent a desire to bring people together, to protect the rights of all, and to encourage mutually respectful dialogue and outcomes in this highly polarized national debate. Conflicts between rights are common and nothing new. When conflicts arise between religious freedom and LGBT rights, the Church advocates a balanced “fairness for all” approach that protects the most important rights for everyone while seeking reasonable, respectful compromises in areas of conflict. The Church affirms this as the best way to overcome sharp

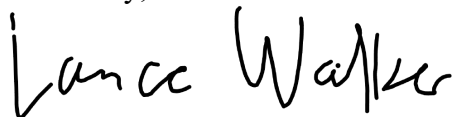
Chairman Durbin and Ranking Member Grassley  
March 16, 2021  
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divisions over these issues. The Church supported the 2015 "fairness for all" legislation in the Utah Legislature that successfully protected both religious freedom and LGBT rights in employment and housing and that has helped facilitate greater understanding and respect.

The Equality Act now before Congress is not balanced and does not meet the standard of fairness for all. While providing extremely broad protections for LGBT rights, the Equality Act provides no protections for religious freedom. It would instead repeal long-standing religious rights under the federal Religious Freedom Restoration Act, threaten religious employment standards, devastate religious education, defund numerous religious charities and impose secular standards on religious activities and properties. The Church joins other religious organizations that also strongly oppose the Equality Act as unbalanced, fundamentally unfair and a path to further conflict.

The Church calls upon members of Congress to pass legislation that vigorously protects religious freedom while also protecting basic civil rights for LGBT persons. It is time for wise policymakers to end this destructive conflict and protect the rights of all Americans.

Sincerely,

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

Lance Walker  
Director of Public and International Affairs  
The Church of Jesus Christ of Latter-day Saints



COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES

In addressing the cultural tension surrounding religious freedom and LGBT rights, the CCCU advocates for a balanced legislative approach that preserves religious freedom and addresses LGBT civil rights under federal law.

There *is* a bill that addresses essential religious liberty protections and LGBT rights (already granted in employment by the Supreme Court in *Bostock v. Clayton County*), and the CCCU supports the **Fairness for All Act**, reintroduced by Congressman Chris Stewart in the U.S. House of Representatives on February 26, 2021. The bill is both principled and pragmatic—it is principled in providing a clear and demonstrable way for people of faith to “love our neighbor” in the civic context, and pragmatic in that the bill makes explicit many religious protections that are important to a rich and vibrant civil society. Orthodox Christian convictions are central to Christian colleges and universities and there must be freedom to practice, teach, and uphold those convictions without penalty.

In pairing religious freedom and LGBT civil rights, the Fairness for All Act underscores that all persons, including LGBT people, are created in the image of God, and therefore possess full dignity, value, and worth. This approach represents civic pluralism at its best, in a society where people with deep differences can live alongside each other with respect and understanding.

**The Equality Act**, as currently drafted, fails to do justice to the rich complexity of moral traditions that are central to the multi-faith and pluralistic world of 21st century America, and also fails to do justice to core ideals of America itself, including a deep respect for differences and the role of religious freedom as a primary driving force in the founding of our nation.

As currently drafted, the bill fails to provide essential religious liberty protections that would allow a diverse group of social service and civic institutions to continue to thrive. In particular, as it relates to the sector of faith-based higher education that has religious convictions around marriage, human sexuality, and gender, the Equality Act would put at risk their ability to hire and operate in accordance with their religious beliefs and missions.

Perhaps most importantly, the Equality Act would restrict student choice in an unprecedented way by preventing middle- and low-income students from being able to take their federal student aid to these institutions. Seven out of 10 CCCU students receive federal funding, and the withdrawal of financial aid, including Pell grants and federal research grants, would have a disproportionate impact on low-income and first-generation college students, as well as students from racial and ethnic minority groups (in 2015-16, 72% of Black students nationally received Pell Grants, compared to 34% of white students).

Faith-based higher education has always been an essential element of the diversity of the higher education system in the United States—many of the first colleges and universities in the United States were religious—and students must continue to be given the opportunity to choose and access the college of their choice in a diverse educational landscape.

The CCCU urges Congress to pass legislation that addresses essential religious freedoms and LGBT civil rights in a comprehensive, balanced, and enduring way.

# Equality Act Lacks Religious Freedom Protections

Today's action by the House of Representatives to pass the Equality Act on a party line vote without hearings or committee markup represents a lost opportunity to develop sensible legislation that would unite our country and protect all Americans from unjust discrimination. The National Association of Evangelicals (NAE) has been a longtime advocate for the religious freedom for people of all faiths and none, and we seek continued protection for all people of goodwill to live in accordance with their genuinely and deeply held convictions.

While the Equality Act offers protections for LGBT individuals, its current form threatens to turn houses of worship and other religious spaces into "public accommodations" subject to intrusive government intervention, in violation of the First Amendment. Where these new rights conflict with the rights of religious people, the Equality Act offers no protection and explicitly removes the existing protection of the Religious Freedom Restoration Act.

"Instead of offering carefully crafted win/win solutions that respect the needs of all Americans, the Equality Act pits LGBT persons against those who believe that God created humans as male and female, and that sexual intimacy is a precious gift from God reserved for marriage between a woman and a man," NAE President Walter Kim said. "This one-sided bill would guarantee decades of continued polarization rather than providing the basis for Americans to live together peacefully despite our profound differences."

Religious charities and institutions that believe marriage is a covenant relationship between a man and a woman play indispensable roles in our social safety net — feeding the hungry, housing the homeless, healing the sick and educating disadvantaged children — as well as other valuable contributions to the well-being of all Americans. The version of the Equality Act passed by the House of Representatives would pressure institutions to change their religious beliefs or withdraw from the public-private partnerships that make our charitable sector so dynamic. If it becomes law, it would tee up decades of contentious litigation.

Rather than promoting full equality for all Americans, the House action today sets back the important work of overcoming the deep polarization in this country. The Senate must reject identity politics and craft legislation that serves the entire nation.

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Founded in 1942, the National Association of Evangelicals includes more than 45,000 churches from 40 denominations and serves a constituency of millions. The NAE provides resources, connection and influence to help evangelical leaders foster thriving communities and navigate complexity with biblical clarity.



Dear Senate Judiciary Member,

I am reaching out on behalf of the Seventh-day Adventist Church to both share our concerns with the Equality Act as currently drafted and offer our assistance in achieving balanced comprehensive LGBT nondiscrimination legislation.

For reference, the Seventh-day Adventist Church has approximately 22 million members worldwide and roughly 6,000 churches here in the United States. We operate both the nation's largest Protestant parochial school system as well as the second largest faith-based health care system. The Pew Forum has identified Adventists as the most ethnically and racially diverse faith tradition in the United States.

The Seventh-day Adventist Church has been public in its support of LGBT civil rights. For far too long religious freedom and LGBT civil rights have been pitted against each other. As Christians, we believe strongly that everyone is created in the image of God and is deserving of dignity, compassion, and respect. To that end, we recognize current federal law does not adequately protect the civil rights of LGBT Americans. **However, the protection of LGBT civil rights does not need to be at the expense of people of faith or the institutions they maintain.**

As currently written, the Equality Act fails to provide essential religious liberty protections that would allow a diverse and essential group of social service, humanitarian and educational organizations to continue to thrive. In its current form, the Equality Act would:

- Jeopardize the eligibility for federal financial aid by religious schools, religious charities, faith-based community services, and houses of worship seeking to receive security grants.
- Create a blanket exemption from the Religious Freedom Restoration Act, which limits the scope of federal religious freedom protections available to religious people and organizations as a defense against discrimination claims.
- Establish a vague and expansive definition of "public accommodations," which threatens the ability of faith communities to administer their houses of worship, schools, and other facilities according to their deeply held religious convictions.
- Produce uncertainty regarding whether current employment protections for religious communities would continue to shield hiring choices guided by their faith.

As drafted, the Equality Act's stripping away of religious protections is both unnecessary and contradictory.

**Protections for LGBT persons can and should be paired with historically-respected religious freedoms to maximize freedom for all.**

Thank you for considering both the LGBT community and people of faith as you work toward legislation that upholds **every American's** right to dignity, respect, and protection from discrimination.

Best Regards,

Melissa Reid  
Public Affairs and Religious Liberty  
Seventh-day Adventist Church – North American Division

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Jerry Wolasky  
Chairman, Advocacy

Nathan J. Diamant  
Executive Director

Howard Friedman  
Chairman, Board of Directors

March 15, 2021

Senator Richard Durbin, Chairman  
Senator Chuck Grassley, Ranking Member  
Members of the Committee on the Judiciary  
United States Senate  
Washington, DC  
by electronic mail

Dear Senators,

We write to you on behalf of the Union of Orthodox Jewish Congregations of America – the nation’s largest Orthodox Jewish umbrella organization – with regard to the Committee on the Judiciary’s hearing scheduled for March 17, 2021.

**Let Us Reason, and Live, Together**

We support the passage of legislation to protect LGBT Americans from discrimination in employment, housing and other aspects of life addressed by the Civil Rights Act of 1964.

But the Equality Act (“EQA”), as pending before this Committee, is a poorly drafted bill whose broad and vague provisions raise issues that go far beyond extending anti-discrimination protections to LGBT Americans and hold the real prospect of improperly and harmfully interfering in the operations of core religious institutions in many communities of faith.

As members of a minority faith community, for whom the law’s protection of the free exercise of religion is an existential issue, we appeal to you to revise this legislation so that the expansion of legal rights for LGBT Americans not come at the expense of the rights of religious Americans. Failure to take this approach on this set of issues will not only result in poor policymaking (that will inevitably lead to years of costly litigation) it will deepen and lengthen the divides in American society around these issues.

We appeal to you, Senators, to do what others have not; find a way to bring together people of good will from different communities to pass legislation that supports and protects the rights of all American as much as possible.

cont’d.....

## **Substantive Problems with the EQA As Pending**

As drafted (and passed by the House), the EQA seeks to protect LGBT Americans from discrimination in all the areas addressed by the Civil Rights Act of 1964: places of public accommodation, employment, housing, by recipients of federal funds and more.

The drafters of the EQA assert that their legislation leaves undisturbed the religious exemptions that already exist in the Civil Rights Act, and that is technically correct. However, given the dramatic ways the EQA amends the Civil Rights Act it cannot be assumed that current religious liberty protections remain unaffected in scope and substance in the face of those amendments.

Indeed, the EQA as drafted would override many state laws that simultaneously provide LGBT anti-discrimination protections together with broader religious liberty protections than are present in the EQA.<sup>1</sup> Proponents of the EQA have often cited the experience of these states to contend that LGBT rights statutes do not imperil religious liberty, yet those proponents fail to carry the paradigm through and incorporate robust religious liberty protections into their proposal.

Moreover, the EQA proposes to amend the Religious Freedom Restoration Act (“RFRA”) in an unprecedented manner and preempt any RFRA claims on matters addressed by the Civil Rights Act. Here too, EQA proponents fail to follow the paradigm of state experience. The states of Illinois, Rhode Island and Connecticut are among many states that have state RFRA laws in their legal codes as well as expansive LGBT civil rights laws.<sup>2</sup> There is no record in these states of RFRA laws being “abused” to curtail the rights of LGBT citizens of those states. And the record of RFRA at the federal level is that it has been used far more to serve the interests of religious minorities than harm LGBT Americans.<sup>3</sup>

In the absence of appropriate amendments to the EQA, here is a sample of illustrative problematic scenarios raised by a reasonable reading of the EQA.

### **1. Title II**

Title II of the Civil Rights Act currently prohibits discrimination in “places of public accommodation” on the basis of race, color, religion or national origin. The Act currently has a very limited list of places that are defined as “places of public accommodation” (ie: hotels, motels, restaurants, theatres etc.). The Equality Act would dramatically, and appropriately, expand the universe of places defined as “places of public accommodation.”

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<sup>1</sup> See, e.g., New York Executive Law §§ 292(9), 296(11) and New York Education Law Section 313, and Wash. Rev. Code § 49.60.040(2).

<sup>2</sup> See Illinois 775 ILL. COMP. STAT. 35/1, et seq. (2010); Rhode Island R.I. GEN. LAWS § 42-80.1-1; Connecticut CONN. GEN. STAT. § 52-571b (2013).

<sup>3</sup> See Goodrich, Luke W., "Sex, Drugs, and Eagle Feathers: An Empirical Study of Federal Religious Freedom Cases" (2017). Utah Law Faculty Scholarship. 67.

## A. Houses of Worship

While federal law, as currently understood (and most state law), does not define houses of worship as places of public accommodation, the Equality Act, as currently drafted, would call that into question under Title II.

- \* The EQA defines “any...place of...public gathering” as a place of public accommodation
- \* The EQA defines “any establishment that provides a good, service or program including...a...online retailer or service provider...” as a place of public accommodation
- \* The EQA defines “any establishment that provides a service...including a....food bank....[or] shelter” as a place of public accommodation

Under any one these provisions, it is possible that houses of worship could be defined as a place of public accommodation.

EQA proponents assert that irrespective of its amendments to Title II, houses of worship will still be protected from being defined as places of public accommodation because they will fit under the “private club” exemption. 42 U.S.C. § 2000a(e) The problem with this claim is that in the face of the EQA’s expansive revisions to Title II, it is not at all clear how that exemption will be applied to the revised law. The private club exemption is available to private entities “except to the extent that [its] facilities are made available to...patrons within the scope of subsection (b).” So, under the Equality Act, if a church operates a food pantry or shelter and offers those services to the public that church becomes a place of public accommodation.

Moreover, when Congress last legislated in the civil rights arena – passing the Americans with Disabilities Act – legislators did not rely upon the very same private club provision, but added to the text explicit language protecting religious entities.

The ADA (42 U.S.C. § 12187) reads:

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000–a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

Should the issue of whether a house of worship is newly defined as a place of public accommodation under the EQA be litigated, a court could reasonably conclude that Congress chose here to not use the explicit language like it used in the ADA and conclude it did not wish to exempt houses of worship and other religious entities from being places of public accommodation.

Here is a range of scenarios (many of which are not related to LGBT issues) that occur in religious institutions and would be violations of Title II if enacted as currently written.

- Congregation Aleph Bet is an Orthodox Jewish synagogue. As such, it
  - Declines to permit an interfaith couple to have their wedding ceremony in the synagogue
  - Refuses membership to an interfaith married couple
  - Conducts gender segregated adult education classes
  - Conducts gender segregated youth activities

- Declines to rent the social hall to an interfaith couple who wishes to celebrate their marriage or child's bat mitzvah
- The Islamic Center of Midtown is a traditional mosque. As such, it
  - Requires gender segregated seating in prayer services
  - Does not permit a person whose birth gender is male and now identifies as trans-female to sit in the women's section in the mosque
  - Declines to permit a same-sex couple to have their wedding ceremony in the mosque

### B. Funeral Homes

The Equality Act expands the definition of places of public accommodation to include "funeral parlors."

There are many funeral homes and cemeteries that operate under religious auspices. In the Jewish community, a religious funeral home does not service non-Jewish clients. If defined by the EQA as a place of public accommodation, this would be illegal discrimination on the basis of religion. Here too, states laws offer a paradigm for appropriately striking the legislative balance.<sup>4</sup>

## 2. Title VI

Title VI of the Civil Rights Act currently prohibits discrimination by any program or activity that receives federal funds on the basis of race, color or national origin. The Equality Act would expand Title VI to prohibit federally funded programs from discriminating on the basis of sex including sexual orientation or gender identity.

### A. Houses of Worship

Synagogues, churches, mosques and other houses of worship receive federal funds under a variety of programs. These include: federal disaster assistance from FEMA, grants to improve their security in the face of threats under DHS's Nonprofit Security Grant Program, and, most recently, the Paycheck Protection Program created in the Covid relief legislation, and others.

For houses of worship that are recipients of federal funds under Title VI questions arise with regard to the same scenarios as above – even if houses of worship are *not* defined as places of public accommodation – in re sex and SOGI, not religion.

### B. K-12 Parochial Schools

Many nonpublic parochial K-12 schools receive federal funds under the programs listed above as well as the National School Lunch Program; religious colleges and universities receive federal funds

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<sup>4</sup> Pennsylvania Human Relations Law § 4(l) specifies "nonsectarian" cemeteries as places of public accommodation. Washington State's law excludes from its list of places of public accommodation "any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution." Wash. Rev. Code § 49.60.040(2)

via Pell Grants as well as federal research contracts. Congress has also provided federal funds to K-12 parochial schools in the CRRSA and American Rescue Plan relief packages.

If non-public parochial K-12 schools and religious colleges are recipients of federal funds under Title VI, here are common scenarios that will place schools in violation of the Civil Rights Act as amended by the EQA if these schools have received federal funds:

- Beis Miriam of Brooklyn is an all-girls Jewish high school and denies admission to boys
- Westfield Christian College has certain religious studies classes taught only by male professors to male students and female professors to female students.

A related question of statutory confusion that is prompted by the EQA is this:

The EQA adds ‘sex, including SOGI’ into Title VI as a prohibited category of discrimination. Title VI does not contain a religious exemption. Title IX currently addresses discrimination on the basis of sex and does contain a religious exemption for religious schools.<sup>5</sup>

How does the insertion of “sex, including sexual orientation and gender identity” in Title VI relate to Title IX – especially Section 1681(a)(1) and (3) ?

### **3. Rules of Construction and the RFRA**

As noted above, the Equality Act proposes to void the application of the Religious Freedom Restoration Act (“RFRA”) to any claims related to the Civil Rights Act. RFRA was written to roll back a terrible Supreme Court ruling authored by Justice Scalia that eviscerated the First Amendment’s protections for religious exercise by Americans of all faiths.<sup>6</sup>

RFRA reinstated a high constitutional standard<sup>7</sup> for Free Exercise claims and assures those claims their proper hearing in court. RFRA was crafted by Sen. Ted Kennedy, Sen. Orrin Hatch and then-Rep. Chuck Schumer (with input from then-White House counsel Elena Kagan); then-Senator Biden supported it as it passed Congress almost unanimously, and it was signed into law by President Clinton.

There are no exceptions to the RFRA standard across the United States Code and the Equality Act should not contain its first carve out. (We note, as Senators on this Committee are aware, that the federal RFRA law only applies to the review of other federal laws, not state or local laws.<sup>8</sup>)

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<sup>5</sup> Title IX U.S. Code §1681(a)(3) provides: “this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization”.

<sup>6</sup> Employment Div. v. Smith, 494 U.S. 872 (1990)

<sup>7</sup> RFRA provides that for an otherwise generally applicable federal law to overcome a challenge that it places a “substantial burden” upon a plaintiff’s religious exercise the law must serve a “compelling governmental interest” and must do via the means “least restrictive” to the exercise of religion in its service of that interest.

<sup>8</sup> See City of Boerne v. Flores, 521 U.S. 507 (1997).

It is again important to state that the experience of states with state enacted RFRA laws – in states including Illinois, Rhode Island and Connecticut – and LGBT civil rights laws there is not a record of the state RFRA laws being used to harm LGBT citizens' rights.<sup>9</sup>

#### **IV. Conclusion**

Amendments must be made to the Equality Act that address legitimate religious liberty concerns and expand the coalition of support for the legislation.

Moreover, bringing together advocates of good faith for LGBT rights and for religious liberty, respectively, to find common ground with regard to the thorny issues of law and policy in this arena is critical. Doing so is the only path to achieve the enactment of legislation that would be not only a historic legal/political accomplishment, but would be the kind of historic healing to fissures in American society that so many voters hope President Biden and this Congress will deliver.

Only by crafting this historic legislation in a way that will strike the balances between multiple American values will the United States Senate deliver enduring legal protections to a wider circle of Americans – LGBT, religious and others.

Sincerely,

***Mark Bane***  
President

***Rabbi Moshe Hauer***  
Executive Vice President

***Nathan J. Diament***  
Executive Director

***Jerry Wolasky***  
Chairman

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<sup>9</sup> *Supra*, Fn. 2.