



ISSUE BRIEF

Talking Points:

H.R. 2015: THE EMPLOYMENT NON-DISCRIMINATION ACT OF 2007

H.R. 2015 is misleadingly referred to as a logical extension of Title VII of the Civil Rights Act. While the Civil Rights Act was enacted primarily to protect the rights of racial minorities, ENDA is aimed at providing heightened protections for a particular sexual behavior – homosexuality. H.R. 2015 is a radical transformation of workplace discrimination law. It would grant special consideration on the basis of “sexual orientation” or “gender identity” that would not be extended to other employees in the workplace.

ENDA is a “one size fits all” solution to alleged discrimination that erases all marriage-based distinctions. It grants special rights to homosexuals while ignoring those of employers. The federal government should not force private businesses to abandon their moral principles.

- **Such legislation affords special protection to a group that is not disadvantaged.** There is no evidence for the oft-repeated assertion by proponents of ENDA that homosexuals, who enjoy higher disposable income levels than married persons, suffer systematic job discrimination and have been excluded from full participation in the political process.
- **The issue is not job discrimination:** It is whether private businesses will be forced by law to accommodate homosexual activists’ attempts to legitimize homosexual behavior. ENDA will require business owners to hire people they believe to be involved in sexual behavior that they consider to be immoral precisely *because* they are openly involved in such behavior.
- **The first “religious exemption” clause is very narrow and offers no clear protection to church-related businesses:** The legislation exempts any religious corporation, etc., “which has as its primary purpose religious ritual or worship or the teaching or spreading of religious doctrine or belief.” Religious schools or charitable organizations, religious bookstores, or any business affiliated with a church or denomination fall outside this narrow definition, and could presumably be required to hire homosexuals.

- **The second “religious exemption” clause fails to offer protection for all hiring by church-related organizations or businesses.** The clause specifies that only those “whose primary duties consist of teaching or spreading religious doctrine or belief, religious governance, supervision of a religious order,” etc., are exempt from ENDA. In other words, a teacher of religion at a church-related school would be exempt, but, e.g., a biology teacher would not. Thus, most of the teachers and staff at a religious school would be covered by ENDA, which means that the church would be forced to hire homosexuals for such positions – despite the fact that their lifestyle would be in direct opposition to the religious beliefs of the organization or company.
- **It is unlikely that the “religious exemption” included in the bill would survive court challenge:** The exemption is likely to be construed narrowly, denying exemption to organizations that have a religious point of view but have no formal connection to a church. Institutions that could be targeted include religious summer camps, the Boy Scouts, Christian bookstores, religious publishing houses, religious television and radio stations, and *any* business with fifteen or more employees.
- **ENDA would mandate the employment of homosexuals in inappropriate occupations.** ENDA disregards the fact that sexual conduct may in fact be relevant to employment. Under such legislation religiously-affiliated employers in the area of education and childcare would be denied the right to refuse to hire homosexuals, even if they consider such persons to be inappropriate role models for children and young people.
- **ENDA violates employers’ and employees’ Constitutional freedoms of religion, speech and association.** The proposed legislation would prohibit employers from taking their most deeply held beliefs into account when making hiring, management, and promotion decisions. This would pose an unprecedented intrusion by the federal government into people’s lives.
- **ENDA would approvingly bring private behavior considered immoral by many into the public square.** The argument “What goes on in the bedroom is nobody else’s concern” is specious. From time immemorial human societies have used legal and cultural means to encourage the traditional family. This is because of the realization that non-marital sexual activity in all its forms has detrimental effects upon individuals and society as a whole. By declaring that all sexual preferences are equally valid, ENDA would change national policy supporting marriage and family.