



How the “Equality Act” Is Actually Unequal, Unfair, and Unjust

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Key Points

The Equality Act would gut religious liberty, create a legislative right to abortion on demand, and add subjective sexual orientation and gender identity categories to civil rights statutes based on innate, inborn, involuntary, and immutable characteristics.

It would harm vast numbers of communities and individuals, including women, children, medical professionals, parents, teachers, students, families (including small business owners), the unborn, churches, religious organizations and schools, and people of faith.

It would even harm the very members of the LGBT community it purports to protect by politicizing health care, which overly complicates patient care and endangers lives.

The Equality Act is legislation that would massively overhaul our federal civil rights framework in order to mandate special privileges for sexual orientation and gender identity (SOGI), expand abortion access, and gut religious liberty—leaving many to suffer the consequences, including women, children, medical professionals, parents, teachers, students, families (including small business owners), the unborn, churches, religious organizations and schools, people of faith, and even those members of the LGBT community it claims to protect.

It would create these mandates by redefining what we mean by the concept of biological sex, redefining what constitutes “discrimination on the basis of sex,” and significantly expanding the scope of various civil rights laws, while exempting itself from the Religious Freedom Restoration Act, in order to impose its requirements as broadly as possible.

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The stated purpose of the bill is to prohibit discrimination on the basis of sex, gender identity, and sexual orientation. While prohibiting discrimination is a laudable goal, the real effect of this bill would not be to eradicate discrimination, but to erase freedom of thought and belief, along with the ability to hold a different opinion while remaining free from government retribution. The Equality Act would mandate government-imposed inequality and unfairness by requiring acceptance of a particular ideology about sexual ethics, while leaving no room for differing opinions and legitimate public debate. Simply put, the Equality Act mandates an anti-life, anti-family, and anti-faith agenda throughout federal law, and would be a disaster for all Americans.

What Is the Equality Act?

The misleadingly-named Equality Act¹ should be called the “In-Equality Act.” This bill would create a massive overhaul of our federal civil rights framework by making almost 60 amendments to nearly 10 different laws including the Civil Rights Act of 1964,² the Civil Rights Act of 1968,³ the Fair Housing Act,⁴ and the Congressional Accountability Act of 1995.⁵ It would significantly expand what constitutes a “Public Accommodation” under Title II of the Civil Rights Act of 1964, add “sex” as a protected class where it has not historically been, redefine “sex” to include SOGI, and redefine what constitutes “sex discrimination” to create a right to abortion. As detailed in the following section, adding SOGI categories alongside characteristics in civil rights statutes that are innate, inborn, involuntary, and immutable (such as age, race, and national origin), or those explicitly protected under the Constitution (such as religion) has numerous negative consequences.

Because the bill will affect public accommodations, public education, all recipients of federal grants and loans, housing, jury service, health care, sports competitions, and other areas, we likely can’t yet know the full scope of its reach, but we do know that these changes would affect numerous entities at all levels of society. It would have an effect on privately owned and operated entities whether they be for-profit or non-profit, memberships, associations, and, in some instances, even private clubs, churches, and other houses of worship.

We also know that this bill would not eradicate discrimination. Rather, it would eradicate freedom of thought, conscience, and belief—resulting in the penalization of anyone who disagrees with the ideologies contained in this bill. The bill would obliterate from the public square views that even Supreme Court Justice Anthony Kennedy said are “held in good faith by reasonable and sincere people here and throughout the world.”⁶

The Equality Act also explicitly exempts itself from our nation’s flagship religious liberty law, the bipartisan Religious Freedom Restoration Act (RFRA), which requires that any substantial burden the government places on religious practice be in furtherance of a compelling governmental interest and be accomplished in the least restrictive means.⁷ RFRA does not mandate that the religious claim win; it merely creates a balancing test by which government actions burdening religion are evaluated. Yet, the Equality Act still guts this core religious freedom law.

Why and How Are Sexual Orientation and Gender Identity Different from Other Classes Already Protected in Law?

The fundamental rights guaranteed by the U.S. Constitution already apply to all Americans—including those who self-identify as lesbian, gay, bisexual, or transgender (LGBT). Because of the history of discrimination against certain classes of people based on innate, inborn, involuntary, and immutable characteristics identifiable at birth (such as national origin, race, sex, and age), civil rights laws have been passed (most importantly, the groundbreaking 1964 Civil Rights Act) to protect people from various forms of discrimination. These laws also protect categories that are not innate, inborn, involuntary, or immutable—such as religion—which is explicitly protected in the Constitution. Other civil rights protections passed since the 1964 Civil Rights Act such as the Americans with Disabilities Act⁸ and Pregnancy Discrimination Act⁹ offer protections that, while more limited in scope, are based on an identifiable physical characteristic not rooted in a belief system or ideology, unlike SOGI.

The new SOGI categories the Equality Act would insert into law are quite distinct from the current categories in civil rights law, since people’s sexual preferences and behavior can change.¹⁰ Nor are they specifically protected in the Constitution, like religion. Adding these categories to civil rights laws

affords special privileges for beliefs and behaviors that are entirely different in kind and nature from the protections in our current framework of civil rights law.

The Equality Act mandate of special privileges of SOGI would be the first time that such feelings, behaviors, and their accompanying belief system would be elevated to the status of a protected class in federal civil rights law.

Who Would Be Harmed by the “Equality Act”?

Last year, when discussing her agenda for the 116th Congress, Speaker Nancy Pelosi said, “If there is some collateral damage for some others who do not share our view, well, so be it.”¹¹ While Speaker Pelosi didn’t acknowledge the vast scope of this collateral damage, the Equality Act is a perfect example of a bill with an expansive amount of entirely *unacceptable* collateral damage. Sadly, this negative impact is much more likely to occur now than it was during last Congress because Democrats now control the legislative and executive branches of government. Those people and groups affected by the Equality Act include:

Pregnant Mothers and Their Unborn Children

The Equality would effectively create a legislative right to abortion on demand. This is because health care providers would be considered a “public accommodation” and prohibited from discriminating on the basis of sex. Discrimination on the basis of sex would be redefined to include treating “pregnancy...or a related medical condition” (which can include abortion) less favorably than other physical conditions. This change, in conjunction with the RFRA exemption and expansion of “public accommodations” beyond physical facilities, jeopardizes long-standing federal conscience laws that protect those opposed to abortion. For example, the Hyde Amendment, which prohibits taxpayer funding for abortion, would be in jeopardy.

Family-Owned Businesses and the Economy

The Equality Act amends Title VII of the 1964 Civil Rights Act by preventing employers from considering SOGI in the context of hiring and “privileges of employment.” Title VII would be further amended to say that, where sex is a bona fide occupational qualification, that individuals are to be categorized and recognized based on their gender identity, not their biological sex. Therefore, employers cannot base their personnel decisions on what is best for their business if they think a person’s biological sex is a legitimate qualification.

The Equality Act would mandate the employment of persons who identify as homosexual or transgender in what some may believe are inappropriate occupations, such as positions that involve bodily searches by a biological male of females, or vice versa (e.g., Transportation Security Administration officials in an airport).

Because employers would almost never be allowed to take SOGI into consideration, the Equality Act would undermine the rights of businesses to set dress and grooming standards or have separate private spaces (e.g., in bathrooms, locker rooms, showers, dormitories, etc.) for biological men and women. The Equality Act would likely lead to costly lawsuits against family-owned businesses, which in turn could threaten the jobs of employees and their families.

The Equality Act’s changes to Title VII also would mean that employers will be forced to provide health care insurance coverage for hormone treatment and/or sex reassignment surgery for individuals with gender dysphoria. If an employer health plan provides coverage of such treatments for other conditions and medical diagnoses like breast cancer, prostate cancer, premenopausal females after oophorectomy, primary testicular hypogonadism, and similar conditions, they would then have to provide them as covered benefits for the purpose of changing one’s gender.

While Title VII generally applies to businesses that have 15 or more employees, the Equality Act also amends Title II of the Civil Rights Act and expands the definition of “public accommodations” to

include “any establishment that provides a good, service, or program.” This expansion means the Equality Act captures businesses regardless of their size. For example, this would apply to the wedding vendors and small businesses who have increasingly been subjected to lawsuits for refusing to violate their beliefs about same-sex marriage in the wake of the Supreme Court’s decision in *Obergefell v. Hodges*.¹² Vendors who do not want to be involved in a wedding celebration other than one between one man and one woman would be forced to stifle their religious beliefs or be forced out of the wedding service business. The Equality Act would force them to violate their beliefs in these situations even if the vendor already serves customers who identify as LGBT in every other aspect of their business practice.

Women and Girls

Women have long fought for equality and fairness and have achieved great success through civil rights protections in federal law. The Equality Act would entirely undermine these protections, as well as the privacy and safety of women and girls.

The eradication of biological sex distinctions would impact certain business loans designated for women, since the Equality Act applies SOGI to Title VI of the 1964 Civil Rights Act regarding the distribution of federal funding. Take for instance, the Small Business Administration (SBA) Office of Women’s Business Ownership, which helps women entrepreneurs and oversees Women’s Business Centers (WBCs).¹³ WBCs are designed to “level the playing field for all women entrepreneurs, who still face unique obstacles in the business world,” but the distinctly female character of this program would be undermined by the Equality Act’s changes. Under the EA, biological men would have access to these funds and programs designed to give equality to women in the workplace. The same would happen to the Women-Owned Small Businesses Federal Contracting program which helps women-owned small businesses compete for federal contracts. The federal government has a five percent contracting goal for women-owned businesses. Yet under the Equality Act’s SOGI mandates, federal contracts could be issued to biological men to meet this already small quota intended for women.

Additionally, Title IX of the Education Amendments of 1972 was intended to ensure fairness and equality for female athletes. The Equality Act would virtually do away with women’s sports as it would allow biological men to compete in women’s sports. This is already occurring in some states. For example, biological boys won first and second place at a Connecticut girls’ high school indoor track championship.¹⁴ As a result, two biological girls fell below the threshold to advance to the next meet, inhibiting their ability to be seen by college recruiters and obtain scholarships. Scholarships are sometimes the only avenue students have to pursue higher education, which could lead to better job opportunities and better pay. Not only is this unequal and unfair, but it is unsafe. In high contact sports, women would be in significant danger of injury as men on average are physically bigger and stronger.

The Equality Act would also virtually do away with sex-segregated spaces, meaning women and girls would no longer have privacy when in publicly accessible bathrooms, locker rooms, or other such space. Similar laws mandating SOGI in public accommodations at the local and state level have already resulted in litigation. In one case, a kindergartener was assaulted by a boy classmate in her school’s bathroom.¹⁵ In another example, a woman who was a rape survivor¹⁶ was forced to quit her job¹⁷ when her employer began allowing men into women’s locker rooms and bathroom and shower facilities (part of her victimization involved being seen in the shower).

The Equality Act specifically includes shelters in its expanded definition of “public accommodations.” Therefore, sex-specific and sex-segregated shelters created to help battered women heal physically and emotionally from abuse by a man would be forced to allow biological men into women’s private spaces, including showers and sleeping quarters. One unfortunate example of this occurred in Alaska, where a biological man tried to gain residence in a battered women’s shelter (he brought a lawsuit against the shelter).¹⁸ In California, a tragic case arose when a biological man was allowed to reside in a women’s shelter, and, according to a legal complaint, sexually harassed nine women.¹⁹

Children and the Faith-Based Organizations Who Help Them

The most disadvantaged children—those in foster care or those needing to be adopted—will be harmed by the Equality Act’s changes to Title VI since that captures all federal funding streams. Faith-based organizations and others play a vital role in the adoption and foster care system and generally receive funding under Title IV of the Social Security Act to do their important work. One recent analysis found that over 440,000 children are in foster care and more than 100,000 of them are available for adoption.²⁰ The numbers are only getting higher; nearly 90,000 children a year enter the foster care system due to the opioid crisis alone.²¹ The Equality Act would shut faith-based organizations down, compounding what has already happened in several states and localities across the country due to SOGI laws. Illinois passed a SOGI and it has resulted in nearly 3,000 children being displaced.²² In Philadelphia, the city put out an urgent call for homes for children, yet due to a SOGI law, it stopped its city contracts for placement with faith-based agencies. This in turn led to former foster parents, including the winner of the Foster Parent of the Year Award, to have empty homes, and in some cases, siblings were almost forced to remain in separate homes.²³

Sexual orientation and gender identity nondiscrimination laws like those contained in the Equality Act are misleadingly cited as the reason for forcing faith-based agencies out of the foster care and adoption space, but in fact, no LGBT-identifying couple or individual has ever been unable to foster or adopt because they identify as LGBT. All 50 states allow such fostering and adoption and have multiple organizations willing to facilitate them.²⁴

Parents

The Equality Act could erode parental rights. For example, when a couple in Ohio declined hormone treatment for their child, the Children’s Hospital of Cincinnati involved child protective services, and the parents were ultimately stripped of their parental rights.²⁵ The Equality Act will only encourage such action against parents—whether in education, the professional world, or public life more broadly.

This bill could also result in modifications to public education, especially in areas like sex ed that many parents would be particularly concerned about and would want to opt their children out of. However, the Equality Act’s validation of certain sexual ideologies will only encourage those administrators and others in public education who wish to marginalize parents and hide the imposition of these ideologies on their children through the public education system.

Teachers and Students

The Equality Act would amend Title IV of the 1964 Civil Rights Act regarding public education. Public elementary, public secondary, collegiate, and university women’s sports would no longer exist as a means of allowing fair competition for biological females. Biological men would be allowed to compete in women’s sports and the Equality Act would guarantee they would not be excluded. Some states already allow this in high school and collegiate sports. As discussed previously, two biological boys won first and second place at a girl’s high school indoor track championship in Connecticut.²⁶ This means that two biological girls fell below the threshold to advance to the next track meet which inhibited their ability to be observed by college recruiters and obtain scholarships. Professional female athletes have already begun speaking out about the unfairness of this; as governmental mandates regarding SOGI become increasingly broad, they could soon affect professional sports.²⁷ Sports entities such as USA Swimming,²⁸ the US Tennis Association,²⁹ and USA weightlifting³⁰ already allow men to compete in women’s sports. The 2020 Olympics could see its first transgender athletes.³¹

The provision in the Equality Act on public accommodations is also so expansive that it is likely to cover private religious elementary and secondary as well as university schools. Additionally, the Equality Act amends Title IV on federal funding issues. Since federal student loans to individuals have been interpreted as a form of “federal financial assistance” to the schools they attend, this would be another reason to apply these mandates on nearly every college and university in the country, including religious ones.³² Any schools which receive federal funds and therefore fall under Title IV of the Civil Rights Act would be bound in all aspects of its operation, including admissions and housing. The Equality Act would therefore mandate some level of SOGI privileges on almost every school in the country.

Medical Community

Beyond the harms noted to pregnant mothers and their unborn children, the Equality Act would further politicize the medical community. This means that all those in the medical profession will be required to offer hormone treatment and surgery for individuals with gender dysphoria, regardless of their moral *or medical* opinions about the actual health benefit of assisting individuals to physically transform their sex.

There is evidence that suicidal ideation remains higher among those who have had sex change surgery. A 2011 study done in Sweden that is one of the most robust studies of the issue found that post-surgery individuals had a suicide completion rate *19 times higher* than the general population. The risk of psychiatric hospitalization was found to be *2.8 times higher* even after adjustment for prior psychiatric disease. Additionally, death by neoplasm (a benign or cancerous mass) and cardiovascular disease was 2 to 2.5 times higher.³³

There is also evidence that puberty blockers and cross-sex hormones have detrimental effects. Puberty blockers actually cause a disease (the absence of puberty—hypogonadotropic hypogonadism). In children, they prevent secondary sex characteristics from developing, inhibit the sex-steroid maturation of the brain, block the child’s growth spurt, lead to low bone density which might not recover, and inhibit fertility. In adults, when used properly (such as to treat prostate cancer in men and endometriosis in women), puberty blockers may cause spatial memory and other cognitive deficits. When combined with cross-sex hormones, permanent sterility may result. Cross-sex hormones alone may cause high blood pressure, heart attacks, blood clots, strokes, metabolic endocrine disturbances (e.g. diabetes), and some cancers.³⁴

Moreover, Title VI of the Civil Rights Act, which is referenced in the Affordable Care Act’s (ACA) nondiscrimination clause, is amended by the Equality Act.³⁵ By changing Title VI of the Civil Rights Act to include gender identity, the Equality Act would codify the ACA regulations which redefined “sex” in statute to include “gender identity.” The ACA has already been interpreted this way under an

Obama-era regulation and has been used to sue hospitals which object to performing transgender surgeries.³⁶ The Equality Act would make this a statutory mandate, not just a regulatory one. Faith-based medical providers should not be forced to violate their religious or medical beliefs or face punishment by the federal government.

The Equality Act could also very well require insurance coverage of hormones and surgical procedures aimed toward changing a person’s biological sex.

The Very Members of the LGBT Community It Purports to Protect

The Equality Act advances policies that do not align with science, and therefore harms members of the LGBT community seeking assistance in an area like health care, which necessarily has to be based on biology and science. For instance, a biological woman identifying as a man and who was listed as a man on medical records was assessed for kidney disease as a man, causing treatment missteps and nearly resulting in death.³⁷ In another example, a biological woman identifying as a man was triaged as an overweight man by hospital staff, who thus had no reason to think this woman was actually pregnant and in labor (which she was). Sadly, she didn’t receive immediate care, and delivered a stillborn baby. The doctor noted that the male classification “threw us off” from the patient’s actual medical needs.³⁸ On another occasion, a biological woman identifying as a man, who had undergone a mastectomy, developed cancer in the remaining breast tissue. The doctor was not sure how to code this patient in the medical records system.³⁹ In another example, a biological woman identifying and appearing to be a man was diagnosed with an ovarian tumor after several steps of treatment.⁴⁰ These developments all reveal how implementing policies based on categories other than biological realities end up harming the people they are designed to help.

Religious Schools

The provisions in the Equality Act on public accommodations are so expansive that they are likely to cover private religious elementary and secondary as well as university schools. Additionally, the Equality

Act amends Title IV on federal funds. Since federal student loans to individuals have been interpreted as a form of “federal financial assistance” to the schools they attend, this would be another way to apply these mandates on nearly every college and university in the country, including religious ones. Any schools which receive federal funds and therefore fall under Title IV of the Civil Rights Act would be bound in all aspects of its operation, including admissions and housing. The Equality Act would therefore mandate some level of SOGI privileges on almost every school in the country. Further, some religious schools could be subject to the Equality Act under its Title VII employment provisions.

Churches and Other Houses of Worship

Like religious schools, churches and other houses of worship could be considered a public accommodation should they provide any goods, services, or programs to their communities (just a few examples include operating a food bank, operating a shelter, and/or being a public wedding venue) and thus could be compelled to comply with the Equality Act’s requirements. Some houses of worship could also be subject to the Equality Act under its Title VII employment provisions.

People of All Faiths Across America

The Equality Act would undermine First Amendment religious freedom protections, and it explicitly states that the Religious Freedom Restoration Act⁴¹ (RFRA) would not apply to the Equality Act and cannot be used as a possible shield against the government imposition of the ideologies contained in it. RFRA was signed into law in 1993 by President Bill Clinton and enjoyed broad bipartisan support. It does not bear any burden on religious exercise. It only creates a balancing test that requires any substantial burden on sincere religious practice to be in furtherance of a compelling governmental interest and done in as narrow a manner as possible. It thus does not guarantee that religious belief would be declared the winner in every instance, but only that people whose religious beliefs are seriously burdened can seek redress. Yet the Equality Act prevents RFRA from even being utilized in scenarios covered by this bill.

While some claim this doesn’t matter because we still have the First Amendment, the truth is that RFRA protects religious freedom more robustly than the Constitution against infringements by the federal government. RFRA requires that the government show a “compelling government interest” that is advanced in the “least restrictive” manner in order to infringe on any sincerely held religious beliefs. On the other hand, the First Amendment (as currently interpreted by the Supreme Court) allows the government to infringe on religious exercise in many cases as long as it does so through a “neutral” and “generally-applicable law.”

If the Equality Act becomes law, individuals with religious views disfavored by the Equality Act would not have RFRA as a tool to defend against a violation of their religious freedom rights.

Conclusion

The Equality Act does not promote equality—it instead creates inequality. It would mandate government-imposed unfairness by requiring acceptance of a particular ideology about sexual ethics. It would result in harm to vast numbers of communities and individuals, including those it purports to protect. The policies embedded in it attack the biological reality of the human person, and harm the family. On top of this, it expands abortion and erodes religious liberty. The Equality Act mandates an anti-life, anti-family, and anti-faith agenda throughout federal law, and would be a disaster for all Americans.

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