



# The Unfairness of “Fairness for All”

## This Bill Should Be Called “Equality Act-Lite”

In response to the Equality Act’s passage in the U.S. House of Representatives, Rep. Chris Stewart (R-Utah) has introduced H.R. 1440, the Fairness for All Act (FFA). FFA is intended to be a grand “harmonizing” compromise. It seeks to find a resolution to the firestorm of litigation and controversy surrounding sexual orientation and gender identity (SOGI). However, despite its supporters’ earnest efforts, FFA is an ill-advised and poorly drafted bill that does not achieve its goal. In fact, it further complicates the issue, invites litigation, and—in failing to adequately address the many concerns that most Americans have with the Equality Act—can properly be called “Equality Act-Lite.” While its (quite minimal) religious liberty protections and neutrality on abortion make it an improvement over the Equality Act, FFA does not adequately protect religious liberty or, for that matter, women’s rights, women’s privacy, women’s safety, children, parental rights, the medical profession, or even the LGBT community.

## **Fairness for All Is Detrimental to Women’s Equality, Privacy, and Safety**

### Equality

- Contrary to its name, the Fairness for All Act would undermine equality and real civil rights gains women have made.

- For example, the [Small Business Administration Office of Women’s Business Ownership](#), whose mission is to “enable and empower women entrepreneurs through advocacy, outreach, education and support,” would have to give biological men who identify as women access to its programs.
- Biological males would be allowed to compete in women’s sports. This would unfairly penalize female athletes and effectively obliterate Title IX. This is [already occurring](#) in some states.
  - For example, [two biological boys have collectively won 15 women’s track titles](#) once held by nine different girls in Connecticut. As a result, biological girls have consistently fallen below the threshold to advance in their sport, 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.
  - *FFA’s exemption of Title IX is inadequate to protect female athletes.*

## Privacy and Safety

- The late Justice Ruth Bader Ginsburg, writing many years ago about sex-based distinctions, defended privacy for men and women in separate bathrooms.
- If FFA becomes law, females will no longer have privacy in most public bathrooms, locker rooms, showers, and battered women’s shelters.
  - The burden is placed on biological women to request an accommodation for more privacy if they are uncomfortable with biological men in their private spaces.
  - If a sex-segregated program is to remain truly sex-segregated, the program facilitator must prove that the segregation is necessary to their program’s essential operation. This invites litigation and might not provide sufficient protection.
  - Similar state and local laws are already revealing the consequences of elevating gender identity to protected class status:
    - A kindergarten girl was [assaulted](#) by a boy in her school bathroom.

- A [rape survivor was forced to quit her job](#) when her employer began allowing biological men into women’s private facilities (being seen in the shower had been part of her victimization).
- A [biological man was allowed residence in a women’s shelter](#), and nine women have [filed a sexual harassment suit](#) against him.
- Like the Equality Act, FFA would allow biological men to compete in women’s sports.
  - In addition to being unfair, allowing biological men to compete in women’s sports is also unsafe. It could lead to significant injuries for female athletes, particularly in high contact sports, as biological men are bigger and stronger than women on average.
  - *FFA’s exemption of Title IX is insufficient to protect the equality and safety of female athletes.*

## **Fairness for All Harms the Very Members of the LGBT Community It Purports to Protect**

- Like the Equality Act, FFA advances policies that do not align with science. It therefore harms members of the LGBT community seeking assistance in an area like health care, which necessarily must be based on biology and science.
- FFA assumes that treating patients according to their gender identity is acceptable care. Medical research is consistently proving this assumption to be incorrect. Patients must be treated according to the genetic and biological make-up of their bodies. Sex differences must be taken into account if the most prudent patient care is to be administered.
- The conscience protections FFA attempts to give medical providers are weak at best.

- The attempt to allow medical professionals the ability to maintain their conscience and rely on their professional analysis would generate litigation on whether their medical decisions are truly made “without regard to protected status.”
- Allowing medical professionals to make evidence-based medical determinations is insufficient. LGBT activists claim that the treatments and care they desire are evidence-based. They have gone so far as to knowingly give false testimony before legislative bodies regarding the “harm” of treatments that have actually proven helpful but are not in line with their ideological demands.
- Harms like these are likely to persist under FFA:
  - 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](#).
  - A biological woman identifying as a man appeared to be a masculine, overweight man to hospital staff. They therefore had no reason to think the patient was pregnant and in labor. Sadly, the patient did not 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.
  - A biological woman identifying as a man, who had undergone a mastectomy, [developed cancer in the remaining breast tissue](#). The doctor was unsure how to code this patient in the medical records system.
  - A biological woman identifying and appearing to be a man was [diagnosed with an ovarian tumor](#) after several steps of treatment.

## **Fairness for All Politicizes the Medical Profession to the Detriment of Patients and Practitioners**

- As stated above, FFA assumes that treating patients according to their gender identity is acceptable care. Moral or medical opinions objecting to assisting individuals in physically altering their bodies would be rendered largely moot, despite science telling us these treatments are actually harmful and that sex-differences matter in health care.
  - [A 2011 Swedish study](#), one of the most robust on 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 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.
  - There is [evidence](#) that puberty blockers and cross-sex hormones can cause cancer, heart disease, diabetes, blood clots, stroke, and more.
  - As recently as last month, a [study](#) suggested that the current “one-size-fits-all approach to considering blood pressure may be detrimental to a woman’s health” and recommended that “the medical community reassess blood pressure guidelines that do not account for sex differences.”

## **Fairness for All Would Harm Children**

- FFA requires that a child in the legal custody of the state be treated in accordance with their gender identity.
  - Treating children according to their gender identity and placing them on puberty blockers or cross-sex hormones is harmful. As already noted above, studies show these

hormonal treatments can lead to sterilization and a host of life-threatening conditions like cancer, heart disease, diabetes, blood clots, stroke, and more.

- FFA forbids a child in the state’s legal custody from going to therapy that has proven helpful to those struggling with same-sex attraction or gender dysphoria.
  - [An analysis of 79 key studies](#) provides no scientific proof that sexual orientation change efforts (SOCE) are usually harmful. If alleged “critical health risks” of SOCE cannot be found in these 79 studies, then it is safe to conclude that they cannot be found anywhere.
- These requirements are dangerous for children.
- Even the American Psychiatric Association, which supports gender identity ideology, [acknowledges that as many as 88 to 97.8 percent of children](#) with gender dysphoria eventually identify with their biological sex.

## **Fairness for All Would Harm Parental Rights**

- FFA’s requirements regarding the treatment of children prevent parents of children in the state’s custody from deciding what is best for their child.
- Such requirements have already been used to strip parents of their rights, something that FFA would only further enable:
  - When an Ohio couple [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. If refusing puberty blockers or cross-sex hormones to children with symptoms or diagnosis of gender dysphoria is deemed discriminatory, cases like this one could become more commonplace.

## **Fairness for All Would Erode Religious Freedom**

- FFA’s supporters claim that it will protect religious liberty, but the bill’s messaging perpetuates the false narrative that only religious individuals oppose the elevation of sexual orientation and gender identity into protected class status.
- Thus, FFA inadvertently affirms that opposition to SOGI laws is based solely on religious bigotry, that traditional views of marriage and sexuality are discriminatory, and that religious liberty is being used as a sword and not a shield.
  - It is religious individuals and entities that have been targeted with a sword before they have even done anything that could be deemed discrimination. A prime example is when Philadelphia stopped using Catholic Social Services (CSS) to help with their foster care crisis. This decision was made even though CSS had never turned away someone because they identified as LGBT. Philadelphia had 29 other agencies that would facilitate adoptions with the LGBT community, yet the city still went after CSS.
- The problem with bills like the Equality Act and the Fairness for All Act is that they cement into law the government’s enforcement of an ideology and belief system about family, marriage, and human sexuality. This wrong narrative perpetuates the destruction of religious liberty. It also steamrolls the fact that many oppose this ideology for non-religious reasons.

## **People of Faith**

- For people of faith, like Jack Phillips, Barronelle Stutzman, Blaine Adamson, the Klines, and many others who want to start their own business, FFA tells them not to grow their business too much. If they have more than 15 employees, they become a public accommodation and can no longer operate in accordance with their faith.

- Jack Phillips is just one example of a business owner who was sued, even though he never discriminated against anyone. He is happy to serve any customer but will not celebrate messages against conscience. Despite a narrow Supreme Court victory, he was sued again by activists who did not want to let him live in peace.
- Under FFA, religious parents would not be able to hold to their religious beliefs if they want to care for children in the state’s custody. Religious families are among the most likely to foster and adopt. It is not easy to be a foster parent, and religious families are the most likely to have longevity in the system and remain available as foster parents for many years. Yet, they would remain unprotected under FFA.
- It would be increasingly difficult, if not impossible, for people of faith who struggle with same-sex attraction or gender dysphoria to pursue professional programs and therapy to help them identify with their religious beliefs over their sexual identification.

## **Faith-Based Organizations**

- Faith-based organizations that play a vital role in the adoption and foster care system sometimes receive federal funding to help their important work. Under FFA, these organizations would be forced to either violate their beliefs or be relegated to a secondary system. They would not enjoy equal status with secular organizations.
  - Thousands of children in Illinois were left without care when Catholic Charities was [forced to shut down](#) under a nondiscrimination law there.
  - Philadelphia [stopped working](#) with Catholic Social Services after the organization refused to compromise its faith tenets, resulting in one less provider in the marketplace and possible tragedy for needy children.