



WASHINGTON OFFICE • 1730 RHODE ISLAND AVENUE NW • WASHINGTON DC 20036

202-835-0414 • FAX: 202-835-0424

Agudath
Israel
of America
אגודת ישראל באמריקה

Rabbi Abba Cohen
Vice President for Government Affairs
Washington Director and Counsel

February 24, 2021

U.S. House of Representatives
Washington, D.C. 20515

Re: Oppose the Equality Act, H.R.5

Dear Representative:

I write on behalf of Agudath Israel of America, a national Orthodox Jewish organization, to urge your opposition to H.R. 5, the Equality Act, legislation that will include "sex, (including sexual orientation and gender identity)," within the scope of federal civil rights laws. Specifically, sex, sexual orientation and gender identity will be among classes protected in statutes covering discrimination in public accommodations, federal funding, employment, housing, and other areas. It does so, however, without respecting the religious beliefs, practices and rights of Americans of faith.

Indeed, the Equality Act would represent a sea change in the respect accorded religious belief and practice in our nation and in the rights and activities of religious organizations. Ultimately, it will dramatically affect the religious freedom Americans of many faiths enjoy. In the Jewish community, synagogues, religious schools and community charities that adhere to Judaism's hallowed and millennia-old code of sexual conduct could be hurt deeply and unjustly by this bill. Perhaps most disturbingly, as we note below, the Equality Act, by its terms, precludes Jews and other faith groups from utilizing the free exercise protections afforded them by the Religious Freedom Restoration Act, and thus severely undermines religious liberty.

Federal Funding and Religious Rights -- The proposed legislation will condition the receipt of federal funds on requirements that may run afoul of a religious entity's beliefs and practices regarding marriage, gender and sexuality. This could affect federal assistance (e.g., security grants, college aid, child nutrition, disaster relief, etc.) to houses of worship, as well as to faith-based schools and colleges, charities, adoption and foster-care providers, emergency shelters for the homeless and victims of domestic violence, and other such agencies that cater to society's most needy and vulnerable.

These institutions are motivated by their religious mission to serve their communities and the public good. Being forced by the Equality Act to violate their religious tenets by adopting current contrary ideologies on sexual conduct, marriage and gender as a condition for receiving federal assistance will lead to an inevitable result: the cutback or elimination of services being

provided by religious entities that are stepping up to fill the void left by government deficits. No religious entity should be put in that position and no deserving beneficiary should have to fall prey to it.

Public Accommodations and Religious Rights – Current civil rights law prohibits discrimination in “public accommodations” and seeks to ensure equal access to basic goods and services. The entities covered reflect this notion: Lodging, food establishments, gasoline stations, places of entertainment and exhibition. Nothing in this language has suggested that houses of worship or other religious entities, per se, were the targets of the statute or should be encompassed within its meaning.

The Equality Act expands the types of entities that would constitute a “public accommodation” to include a place of “public gathering” or “any establishment that provides a good, service or program.” This goes far beyond the original scope of the statute. And a reasonable reading, together with the examples the Act offers, could very well be seen as encompassing within the new definition’s grasp houses of worship and other religious entities that provide charitable or social services to the community, such as food pantries or homeless shelters. Absent is any language that makes clear that religious institutions are considered to be outside the realm of “public accommodations,” as they were always considered to be under the current narrower language.

This concern could extend, for example, to Jewish funeral homes and cemeteries, kosher food stores and caterers, and rabbinic organizations that certify kosher products and catered functions. It could further include businesses that provide wedding services, such as florists and bakeries, where the Supreme Court itself in *Masterpiece* showed serious concern for the treatment of the religious convictions of the Christian baker. Yet, the Equality Act shows no such concern and makes no such accommodation for the religious beliefs or practices of religious entities or adherents.

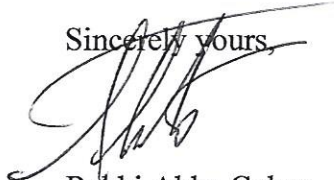
Religious Freedom Restoration Act -- Finally, perhaps the most egregious aspect of the Equality Act is its denial of free exercise protection under the Religious Freedom Restoration Act (RFRA). Congress overwhelmingly passed RFRA to safeguard religious liberty and to give religious adherents a fair hearing and their day in court. No case -- no matter how unpopular -- was deemed to be beyond the reach of the free exercise standard that the First Amendment itself provides, and no case was to be pre-judged without a balancing of interests and due consideration of both religious rights and governmental concerns. RFRA represents the restoration of religious liberty to its traditional and rightful place as America’s First Freedom and to its profoundly important status in relation to other civil rights, even while not, *per se*, favoring every religious practice over any governmental interest.

Yet, the Equality Act flies in the face of that commitment and does so in the reverse direction by favoring rights based upon sexual orientation and gender identity. Through exempting provisions of the bill from RFRA defenses, it not only denies religious freedom to American citizens and institutions, it sends a much more dangerous message: that religious belief and practice are not even worthy of consideration in a court of law and that religious adherents

and are not even worthy of the possibility of protection. By precluding access to RFRA, the Equality Act erases religious freedom – the foundational principle of our republic – from our law. Congress has never taken that drastic and devastating step. It should not do so now.

And it is worse. Without provisions that accommodate religious belief and practice, and without providing the protections of RFRA, the Equality Act plays right into the narrative of those who seek to deny America's religious heritage, to portray religious adherents as bigots and haters, and to change what to millions of Americans are millennia-old, Divinely-revealed, sincerely-held moral values. This hostility toward religion is not countenanced by our law or our ideals. We urge you to oppose H.R. 5, the Equality Act.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Abba Cohen', written in a cursive style. The signature is positioned above the printed name 'Rabbi Abba Cohen'.

Rabbi Abba Cohen

RAC/ me