

Homosexual and Transgender Employment Bill Threatens Religious Liberty

In November, the U.S. Senate passed a version of the Employment Non-Discrimination Act (ENDA), a bill that creates a special status for sexual orientation and gender identity in the workplace.

ENDA unjustly interferes with the liberty of employers in the free market to determine their own standards for employment, based on characteristics that (unlike race or sex) primarily involve voluntary conduct (the choice to engage in homosexual conduct or the choice to present one's self as the opposite of one's biological sex).

In addition to this underlying threat to the free market for employment, however, ENDA poses a specific threat to **religious liberty** as well. The theologically orthodox teaching of both the Christian and Jewish faiths has always been that, in keeping with the teachings of Scripture, sexual relations between persons of the same sex are contrary to the will of God.

While the vast majority of employers would not consider an employee's sexual orientation relevant, many religious organizations motivated by and proclaiming those faiths will logically seek employees whose conduct is consistent with the moral standards they teach. Such employers include not only churches and synagogues, but also schools, parachurch ministries, religious charities and nonprofits, and even profit-making corporations that sell religious products.

Laws protecting sexual orientation and gender identity at the local and state levels usually contain at least something that passes for a religious exemption, but the scope of those

exemptions varies.

In some cases, the exemption has been applied only to clergy but not to other church employees. In other cases, church employees may be exempt, but those at religious nonprofit organizations are not. Or religious nonprofits that primarily proclaim the gospel may be exempted, but those that engage in “secular” activities (such as feeding the poor or educating children) are not.

Even if all religious nonprofits could be exempted, such laws rarely, if ever, exempt profit-making corporations—even though a Christian bookstore or Bible publisher may see its mission as being just as religious as any nonprofit ministry. (Lawsuits over the HHS mandate in **Obamacare** have shown that profit-making corporations have legitimate concerns about federal mandates that would force them to compromise moral principles.)

Advocates of ENDA argue that its religious exemption is relatively broad. The 1964 Civil Rights Act law exempts religious organizations from the ban on employment discrimination based on religion. ENDA would exempt any organization that qualifies for that exemption from ENDA’s provisions as well.

The exemption in the 1964 act was based on the reasonable grounds that organizations motivated by their faith should be free to give preference in hiring to those who share that faith. There is largely a social consensus that such flexibility in hiring furthers the free exercise of religion already guaranteed by the Constitution.

However, advocates of ENDA are people who fundamentally believe it is never reasonable to make moral distinctions between homosexual relationships and heterosexual ones. This is not a point of consensus—it is precisely the point in dispute. Therefore, it is reasonable to doubt whether ENDA’s

advocates—or enforcers—will be generous toward employers that decline to employ people who engage in homosexual conduct.

Even if the rights of all religious employers are fully protected, a threat to religious liberty would remain. This is because there is no exemption in the bill for religious employees. Under ENDA, anyone who expresses the personal moral conviction that homosexual conduct is wrong would be vulnerable (or make their employer vulnerable) to charges of creating a “hostile work environment” for homosexual co-workers. That person would be at risk of being disciplined or even dismissed.

This is no mere hypothetical—there have been numerous examples already. Allstate insurance fired attorney Matt Barber (now with Liberty University Law School) for online writings against the homosexual agenda done on his own time. Gallaudet University suspended administrator Angela McCaskill merely for signing a petition to allow a referendum in Maryland on the redefinition of marriage to include same-sex couples. Fox Sports Southwest recently fired Craig James as a college football commentator after only one appearance—for positions he took while running for the U.S. Senate a year and a half earlier. This is why I have contended that ENDA would drive Christians “into the closet” even as it brings homosexual and transgender individuals out.

Conservatives are sometimes accused of trying to legislate morality. In this case, however, it is ENDA that seeks to legislate morality at the federal level—but it is the morality (or immorality) of the sexual revolution, which directly contradicts the sexual ethics of the Judeo-Christian tradition. Any member of Congress seeking to protect religious liberty should reject ENDA.

Peter Sprigg is senior fellow for policy studies at Family Research Council. This article appeared in The Christian Post on Friday.