



HR 5: THE (IN)EQUALITY ACT

An Existential Threat To Families and Faith Communities

The landmark Civil Rights Act of 1964 was enacted to remedy discrimination against individuals based on the innate and immutable characteristics of race, color, national origin, and sex. Congress recognized that people were being denied rights and privileges and forced to endure substandard housing, employment, and educational opportunities solely because they were born of a particular race or nationality, with a certain skin color, or as a female. Passage of the Civil Rights Act rightly meant that those innate characteristics could not be used to justify differential treatment in education, housing, employment, and other essential goods and services.

The **(In)Equality Act, H.R. 5**, was reintroduced in 2021 after failing to obtain Senate approval in 2019. It proposes profound and far-reaching changes to the Civil Rights Act that would directly threaten religious liberty, free speech, freedom of conscience, the sanctity of life, parental rights, and the privacy and safety of women and girls. The proposed changes to the Civil Rights law under HR 5 would erase biological reality and actually reduce, not expand, protections against discrimination, contrary to the original intent of Congress.

H.R. 5 has passed in the United States House of Representatives. Joe Biden and Kamala Harris have made clear their intent to pass this bill. It is now pending in the United States Senate, where it must now be stopped. If passed, here is what it would do:

- **Redefine Sex To Include “Sexual Orientation” and “Gender Identity”**
HR 5 would add “*sexual orientation and gender identity*” to the term “sex” throughout the Civil Rights Act. Therefore, “sex” would no longer be defined as it has for millennia as the objective biological reality of being male or female. Instead it would include the societally derived concepts of sexual orientation or gender identity as being equal to and interchangeable with sex, thereby overriding the very nature of “sex” in the law.
- **Require Owners of All Establishments Open to The Public to Comply**
HR 5 would expand the definition of “public accommodations” required to comply with this new definition of “sex” to include: a “*stadium or other place of or establishment that provides . . . recreation, exercise, amusement, public gathering, or public display.*” This would readily include facilities faith-based organizations use for public gatherings or for sports or recreational activities for children. [HR 5, Sec.3 Public Accommodations (a)(2)(A)] It would also include: “*any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services.*” [HR 5, Sec.3 Public Accommodations, Section 201(a)(4)]
- **Force Faith-Based Organizations to Hire Employees Who Do Not Share Their Beliefs**
Owners and employers of virtually all establishments open to the public would have to ensure that hiring policies, dress codes, codes of conduct, promotions, and disciplinary actions do not

treat someone differently because they are or are perceived to be lesbian, gay, bisexual or transgender. That includes churches and faith-based non-profits having to hire people who do not share their beliefs. In addition, property owners would have to ensure that all users of their property comply with these rules. [Sec. 7, Employment, new Section 701A].

Faith-based organizations would be able to continue to rely on the “ministerial” exception for employment decisions, but that offers only limited protection. The U.S. Supreme Court has established that protections for religious freedom under the First Amendment include protections for religious organizations related to hiring, firing, and other employment actions related to “ministers.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188–89 (2012).¹

HR 5 would have to be interpreted consistently with this Supreme Court authority. This means that churches would not be liable for employment decisions that might be viewed as discriminating on the basis of “sexual orientation” and “gender identity” if those decisions relate to a “minister.” This will be only limited protection, however, because the exception is considered an “affirmative defense,” which means it can only be raised in response to a lawsuit. A church would still have to incur legal expenses to respond to a lawsuit and prove that the hiring decision involved a “minister.” Proving the defense would require at least some inquiry into the organization’s tenets, which it itself grants some level of access into the workings of the church.

Most importantly, because the ministerial exception would apply only to employees regarded as ministers, it would not insulate churches from hiring decisions related to other staff. Without the protection of RFRA (see below), therefore, faith-based organizations would still be required to adopt LGBT-friendly employment policies.

- **Threaten Religious Freedom and Free Speech**

Evincing a blatant hostility toward religion, HR 5 would explicitly remove the protections of the *Religious Freedom Restoration Act* (42 U.S.C. 2000bb et seq.) as a defense to a claim covered by HR 5 or as a basis for challenging its enforcement. Faith-based organizations would be compelled to, *e.g.*, adjust their programs, open up their privacy facilities to transgender (opposite-sex) persons, and revise employment policies, or be subject to liability. [H.R. 5, Section 9 Miscellaneous, new Section 1107]

HR 5 would also require that public schools adopt policies that compel children and adults, contrary to their sincerely held beliefs or biological reality, to refer to other students or employees as a member of the opposite sex if that is how he or she identifies. [H.R. 5, Section 9 Miscellaneous, new Section 1101 Definitions and Rules (a)]

¹ “Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group’s right to shape its own faith and mission through its appointments.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188–89 (2012).

- **Require All Organizations Open to the Public to Open Up Their Bathrooms**
HR 5 would require that schools, workplaces, and all establishments falling under the expanded definition of “public accommodations” to permit biological males who subjectively identify as females to use shared privacy facilities (restrooms, locker rooms and dressing rooms) set aside for females, and vice versa. Women and children who use these facilities would surrender their right to privacy and be placed at increased risk for harassment or assault by men who claim to identify as women. [H.R. 5, Section 9 Miscellaneous, new Section 1101 Definition and Rules (b)(2)].

- **Undermine Parental Rights and Instruction**
By requiring that all privacy facilities in schools be open to members of the opposite sex if they self-identify as another sex, HR 5 would undermine parental rights to direct the upbringing and education of their children. Values of sexual modesty and privacy would be contradicted by school officials who require that children accept the presence of an opposite sex classmate in their restroom, locker room, or shower. [HR 5, Section 1101 Definitions and Rules (a)(1) and (b)(2)]

Children would be required to accept that their female classmates are actually male or male classmates are actually female, contradicting their parents’ instruction concerning the binary nature of sex. HR 5 would also likely lead to universal instruction about sexual orientation and gender identity as normative, further contradicting parental teaching about the created nature of men and women and human sexuality.

- **Force Health Care Providers to Provide Abortions, Gender Transition Treatments**
Individuals and organizations who provide health care would be prohibited from refusing to perform abortions, “gender-affirming” surgeries, or any procedures requested by LGBT patients on the basis that it violates the provider’s religious beliefs. Because of the breadth of the “public accommodations” definition, every health care professional, even those who are not part of an organization, would be required to provide such services regardless of their religiously based objections or face liability. [See HR 5, Sec.3 Public Accommodations (a)(4) and Section 1101 Definitions and Rules (b)(1)].

- **Jeopardize Girls’ and Women’s Athletic and Educational Opportunities**
HR 5 would require that sex-separate athletics be available based upon how students self-identify, instead of their biological sex. This would force girls and women to compete for athletic opportunities and scholarships against males who have physical advantages that cannot be overcome by cross-sex hormones, and can create significant risks of injury for girls and women. [HR 5, Section 1101 Definitions and Rules (a)(1)].

- **Inevitably Threaten Tax-Exempt Status for Faith-Based Organizations**
While not explicitly included in HR5, faith-based organizations that refuse to comply with its redefinition of sex could face loss of their tax-exempt status. Once the expanded definition of sex is enshrined in the Civil Rights Act it would trigger additional statutory and regulatory actions designed to enforce the law. It is foreseeable that these additional actions would result in denial of tax-exempt status to organizations that violate the Act.

CALL TO ACTION

The U.S. Senate Judiciary Committee held a hearing on H.R. 5 on March 17, 2021. Leaders in the Senate have declared their intent to move this bill to a full Senate vote quickly. It is imperative that pastors and faith leaders take immediate strategic action to stop its passage. Here is what you should do:

- Find your U.S. Senator here. The Senate switchboard number is: (202) 224-3121.
- Numbers matter to politicians. Leaders of large churches, pastor associations, or faith-based movements should contact your U.S. Senators to **request a meeting** to discuss the threat HR 5 poses to your organization and to parents, students, medical professionals, and business-owners within your community.
- Pastors and leaders should notify other pastors, association of pastors, or faith-based groups of the threat and invite them to join in **preparing a joint letter** informing your U.S. Senators of your opposition to HR 5 and urging them to vote “No” on this bill.
- If not part of a larger group, send a **letter on behalf of your church** via email and U.S. mail to your U.S. Senators informing them of the harms of this bill and asking them to vote against it.
- **Educate your congregation** from the pulpit on the threats posed by HR 5 and encourage them to **contact their U.S. Senators** with letters, emails, and calls urging them to vote “No” to this bill.

TOOLS FOR ADVOCACY

Child & Parental Rights Campaign has developed tools to assist faith leaders and their congregations to let their voices be heard. You may email us at info@childparentrights.org and ask for the following:

- Sample letters concerning HR 5 Equality Act to U.S. Senators for –
 - Ministerial associations
 - Churches and congregations
 - Individual church members
- A Power Point presentation to share with your congregation or other leaders
- Participation by one of our attorneys on virtual gatherings with other faith leaders concerning HR 5.

The Child & Parental Rights Campaign, Inc. is a non-partisan not-for-profit public interest law firm founded to protect the well-being of children and defend parental rights against the harms of gender identity ideology. You may visit our website at: www.childparentrights.org or contact us at 770.448.4525 or info@childparentrights.org.