

AFFIRMATIVE ACTION FOR THE SEXUALLY CONFUSED?

Catholic League president Bill Donohue comments on the "Equality Act," which is expected to be introduced this week:

The Equality Act has been around for decades, under various names, but it always fails. It will again this year, even if it clears the House; Rep. Nancy Pelosi, the House Speaker, has said the legislation is a priority for the new Congress. If most Americans knew what it is really about, they would not support it.

This bill is not about equality—it is about trashing the free exercise of religion as guaranteed by the First Amendment. In effect, it would gut the constitutionally sound practice of awarding religious exemptions whenever there is a conflict between religious expression and the rights of homosexuals and the sexually confused (e.g., a man who thinks he is a woman, and vice versa).

The Equality Act has two major goals: (a) it would amend the Civil Rights Act of 1964 to ban discrimination against homosexuals and the sexually confused, and (b) it would undermine the Religious Freedom Restoration Act (RFRA) of 1993 by allowing gay rights to trump religious rights.

The predicate of this legislation is that sexual orientation and gender identity are analogous to race and ethnicity, and are therefore deserving of the same protections afforded by the Civil Rights Act. However, that is based on a false assumption.

Sexual orientation speaks to behavior, and gender identity, in this context, refers to the sexually confused; by contrast, neither race nor ethnicity are a function of volition.

While no one can justify unequal treatment on the basis of ascribed characteristics such as race and ethnicity, justifying disparate treatment on the basis of achieved characteristics such as sexual orientation and gender identity can be justified in some instances.

For example, religiously devout parents may rightly object to having their children counseled by a woman who has acquired male genitalia. In normal times, this would not be controversial. Sadly, we live in abnormal times.

There is one very important aspect of the Equality Act that has been generally ignored, even by its critics: It would mean that homosexuals and the sexually confused would qualify for affirmative action.

Of course, the Equality Act says nothing of the kind. It is deceptive. In fact, it pulls the affirmative action trigger.

When the Civil Rights Act was proposed, Sen. Hubert Humphrey, the majority whip, explained that "the proponents of the bill have carefully stated on numerous occasions that Title VII does not require an employer to achieve any sort of racial balance in his work force by giving preferential treatment to any individual or group." He even went so far as to say that he would "start eating the pages [of the bill] one after another" if any such language were found.

Humphrey was right about the bill—it explicitly prohibited preferential treatment. But he was wrong regarding its interpretation by administrative agencies and the courts. In its wake have come goals, timetables, quotas, utilization studies, validation tests, maps, charts, graphs, as well as bureaucrats armed with their supplementary updates. And lots of lawsuits, most of which affirmed preferential treatment.

Hence, if African Americans qualify for preferential treatment because of the way the Civil Rights Act has been interpreted, then there is no stopping homosexuals and the sexually

confused from qualifying were the Equality Act to pass.

This would mean that an employer who is a practicing Catholic, evangelical Christian, observant Jew, Muslim, or Mormon, would be expected to give preferential treatment to homosexuals and the sexually confused (save for small businessmen) when hiring.

We cannot allow the Pelosi rule—pass the bill and then we'll figure out what it means—to be operative. We already know what it would lead to, and that is not something most Americans would ever support.

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