

Don't ENDanger Your Liberties in the Workplace

by Robert A. J. Gagnon, Ph.D.

Oct. 23, 2007

The so-called "Employment Non-Discrimination Act of 2007" (ENDA), which could be more appropriately entitled an "Employment Discrimination Act against Christians," will be voted on Wednesday or Thursday of this week (Oct. 24-25) in the House of Representatives (H.R. 3685).¹ There is one thing that is essential to know about this bill: If you are someone who has any reservations about homosexual practice, the passage of this bill will seriously "ENDanger" your freedoms in the workplace like no other issue. It is urgent that you call your Representative in the U.S. Congress (and now or soon your Senators) to express your strong opposition to this bill (at 202-224-3121, www.congress.org).

Don't let the proponents of the bill fool you. Despite a "religious exemption clause" your liberties in the workplace are endangered. Here are three main points that stand out.

1. ***The bill will virtually codify you as a bigot so far as the federal government is concerned if you oppose homosexual practice on moral grounds.*** The biggest fallout from the bill is the establishment of "sexual orientation" (defined as "homosexuality, heterosexuality, or bisexuality") as a specially protected category of *federal law*. As sure as night follows day, **this will be the proverbial foot in the door by proponents of homosexual practice that will lead, eventually but irrevocably, to "gay marriage"** (mandated by the U.S. Supreme Court), **a nationally enforced indoctrination of children into the homosexualist agenda in schools,² and the criminalizing of opposition to homosexual practice at the national level.** This is the way that such actions have been advanced on the state level. Courts use so-called anti-discrimination laws regarding "sexual orientation" as the legal foundation for pushing the homosexualist agenda to its logical

¹ For text go to <http://thomas.loc.gov/cgi-bin/query/F?c110:1:/temp/~c1107wEGio:e1082>. This is a revision of H.R. 2015 minus the "gender identity" clause covering transgenderism. For the text of H.R. 2015 go to <http://thomas.loc.gov/cgi-bin/query/F?c110:1:/temp/~c110bOOs1h:e2070>.

² Peter LaBarbera, president of Americans for Truth about Homosexuality, is certainly correct when he states that ENDA "would be used to defend the placement of openly homosexual and bisexual teachers in our nation's public schools in ALL localities. . . . For the more activist-minded homosexual teachers who are already in schools, H.R. 3685 could lead them to more boldly promote and discuss their lifestyle in the classroom, as schools could be sued for discrimination if they dared to discipline activist 'gays'" ("Fourteen Good Reasons to Oppose H.R. 3685, the 'ENDA Our Freedom' Bill"; online: <http://americansfortruth.com/news/13-good-reasons-to-oppose-hr-3685-the-enda-our-freedom-bill-bush-staffers-helped-craft-enda-exemption.html>; retrieved 10/23/07).

conclusion. Even from the outset this bill will put the full weight of the federal government behind the heinous view that opposition to homosexual practice is the equivalent of virulent racism and sexism. You have been virtually codified in law as a bigot.

If you are not convinced that this will be the outcome, try including “pedosexuality” (i.e. pedophilia), a sexual orientation toward children, **under the rubric “sexual orientation”;** or **“polysexuality”** (i.e. polyamory), a sexual orientation toward multiple sexual partners concurrently that could justify polygamy or nontraditional “threesomes.” Then **ask yourself whether inclusion of these under a “sexual orientation” “non-discrimination” bill would promote such behaviors and put on legal notice any opponents.** The answer, of course, would be “yes.” Presumably framers of the bill did not make such an inclusion because they didn’t want to promote pedophilia and polygamy. The inference is obvious. Inclusion of “homosexuality” and “bisexuality” under “sexual orientation” will lead to the promotion of such behavior in society and the attendant diminishment of the rights of those who oppose the behavior.

A bill such as this could almost single-handedly end the cultural debate about homosexual practice. Through legal intimidation in a venue that most adults spend most of their awake-hours the society will be dragged into acceptance of the homosexual lifestyle.

2. *Omissions left out of the bill today, or exemptions put in, will be reversed in the near future.*

a. **The current omission of perceived “gender identity” or transgenderism³**

Originally the bill included “gender identity” alongside “sexual orientation.” “Gender identity” is not defined by “the individual’s designated sex at birth” but rather by what one personally perceives one’s own gender to be. In other words, the bill would have provided protection for persons who perceive their gender to be other than their birth-gender (i.e. the “transgendered” generally and “transsexuals” specifically). When it looked like the bill wouldn’t pass with a “gender identity” clause supporters removed it. However, the Democratic leadership will now attempt either to reinstate H.R. 2015, which includes both “sexual identity” and “gender identity,” or put forward a separate bill, H.R. 3686, that does for “gender identity” what H.R. 3685 wants to do for “sexual orientation.”⁴

Whether “gender identity” passes this time around makes little difference in the long run. **If a “sexual orientation” ENDA is passed, it is only a hop, skip, and a jump for Congress to amend the bill or for the courts to declare the**

³ For a discussion of the phenomenon from a Christian perspective see my “Transsexuality and Ordination” (2004, 2007; 13 pgs.; online: <http://www.robagnon.net/articles/TranssexualityOrdination.pdf>).

⁴ For the text of H.R. 3686 go to <http://thomas.loc.gov/cgi-bin/query/F?c110:1:./temp/~c1100bZkoj:e1047:>.

inconsistency and “unconstitutionality” of excluding transsexuals from the same special protections accorded homosexual and bisexual persons. Given the current maneuvers of the Democratic leadership it is reasonable to believe that a Democrat-controlled Congress will continue to push for the passage of a “gender identity” clause. It will be a lot easier to pass such a bill when a “sexual orientation non-discrimination” act is already in place.

True, both the original bill, H.R. 2015, and the new bill, H.R. 3686, made certain provisions protecting the employer from having to grant a cross-gendering person access to a “shared shower or dressing facilities in which being seen *fully unclothed is unavoidable.*”⁵ Moreover, the employer can insist on “reasonable dress and grooming standards.” Yet even **these provisions require that the employer provide facilities that are “not inconsistent with” the employee’s perceived gender identity.**⁶ The exemption does not necessarily apply to shower or bathroom facilities with closed-off stalls because there, arguably, being seen “fully unclothed” is avoidable. **In addition, the employer must allow the cross-gendering employee to dress in a manner appropriate to the sex to which the employee is in the process of “transitioning.”** So if a man declares to his employer that he is “transitioning” into a woman, he must immediately be allowed entrance into the ladies room (or newly constructed facilities) and the right to wear a dress and make-up consistent with his new identity as a woman. Even if the person is in the sales department or customer relations, where business depends on not alienating or “weirding out” customers, the employer must accommodate to this new perceived gender of the employee. As Dana Carvey’s “church lady” character would say, isn’t that special?

Matthew Staver, chairman of the Liberty Counsel, has rightly stated in testimony before Congress that a “non-discrimination gender identity” clause “requires forced acceptance of a very radical notion that gender is merely a product of personal expression completely unrelated to a person’s biology of physiology. [Passage of such a bill] represents the abolition of gender, which is the primary end goal of the same-sex agenda.”⁷ To be sure, the affirmation of homosexual practice already to some extent accomplishes this, since one’s sex or gender links closely to the sex or gender that desires as a complementary other-half. But the

⁵ Emphasis added.

⁶ The newer bill, H.R. 3686, adds to the earlier version, H.R. 2015, the proviso: “Nothing in this Act shall be construed to require the construction of new or additional facilities.” But if new facilities are not required and yet the employer must give the employee access to facilities “not inconsistent” with his perceived gender identity, the employer must allow the employee use of the opposite-sex restroom.

⁷ “Testimony of Matthew D. Staver . . . Before House Education and Labor Subcommittee on Health, Employment, Labor, and Pensions,” Sept. 13, 2007, p. 3 (online: <http://www.libertyaction.org/9081/ENDA.htm>; accessed Oct. 2007). As examples of forced accommodation to the principles of transgenderism Staver cites women’s clothing retailers being forced to hire “men who believe they are women to sell their goods” and football cheerleading squads being “forced to hire a man who thinks he is a woman for their squad assuming he is otherwise qualified.” “An argument could be made that such individuals could not perform their job duties, but ENDA’s acknowledgment that gender [more specifically, one’s birth-sex] does not matter would prohibit this kind of argument.”

forced acceptance of the premises of transgenderism makes explicit what is implicit in the acceptance of homosexual practice.

b. The exemption for religious organizations

Similarly, the current “exemption for religious organizations” in Sec. 6 is being used as part of a **bait-and-switch tactic**. The bill couldn’t possibly be passed without one. So the accommodation is made but with the awareness that **once the homosexualist agenda holds absolute sway in the public sector, Congress or the courts will eventually revoke or so attenuate the exemption as to render it legally meaningless. For example, religious colleges and seminaries could be denied federal funding** for research and student loans for “discriminating” against homosexually active persons, even as their “right” to “discriminate” against homosexual or bisexual persons is preserved (as Bob Jones University found out as regards its infringement of the civil rights of African Americans).

3. *Even while the exemptions are in place there will still be serious abridgement of liberties in the workplace.* It is important to note what protections the so-called “religious exemption” does not give to religious persons. Sec. 6, “Exemption for Religious Organizations,” now states only: “This Act shall not apply to a religious organization,” where “religious organization” is defined as “a religious corporation, association, or society; or a school, college, university, or other educational institution or institution of learning” if owned or supported by a particular religion or “the curriculum . . . is directed toward the propagation of a particular religion.” What does this not cover?

First, it is not clear that the courts would understand this exemption to apply to all employees of a religious organization or only to those employees “whose primary duties consist of teaching or spreading religious doctrine or belief” or supervising “religious ritual or worship” (as the earlier version, HR 2015, sec. 6b, reads). If the latter, the exemption would not cover many staff members at a Christian college and seminary.

Second, the exemption would not apply to secular businesses owned by Christians, even those shaped by Christian values. It would probably not apply to **any profit-making Christian businesses, such as religious bookstores and religious day care centers**. Whether the exemption would apply to **parachurch ministries** such as a Christian shelter or retirement home is very doubtful, as the Alliance Defense Fund has argued.⁸ As the defendant in a lawsuit instigated by a

⁸ See the 2-page letter produced by the Alliance Defense Fund, a legal alliance of Christian lawyers, posted at <http://www.afa.net/endaletter.pdf>. They contend convincingly that the bill’s definition of religious organization “puts parachurch ministries at grave risk. For example, one court held [in 1983] that a United Methodist children’s home was not a ‘religious organization’ under a very similar definition found in the 1964 Civil Rights Act. Amazingly, the court held fast to its opinion despite the fact that the home was hiring a new minister *specifically to protect its religious mission*. Another court [in 2007] devised a nine-part, subjective ‘balancing’ test to decide whether a Jewish community center was ‘religious’ under the same federal law. Importantly, two of the nine ‘secularizing’ factors are very common among parachurch ministries: few such

homosexual or bisexual applicant, the burden of proof would be on the entity seeking exemption. This, in turn, means costly litigation with dubious prospects of success.

Third, and most importantly, **the exemption for “religious organizations” doesn’t cover the religiosity of persons working in a non-religious organization, which is where the vast majority of religious persons work.** And make no mistake about it: the bill isn’t limited to decisions of hiring or firing. It pertains to any actions that “adversely affect the status of the individual as an employee.” Picture the following scenarios:⁹

- **Suppose in the lunchroom or at the water cooler** you engage in a conversation about sexual ethics. If a fellow employee extols homosexual bonds and **you express your moral reservations about such bonds**, you or the company could be liable for an anti-discrimination lawsuit for creating an intimidating atmosphere in the workplace that adversely affects the standing of a person who is vocal about his or her homosexual activity.
- Let’s say that, in response to “diversity” posters, **you post on your cubicle the text of Rom 1:24-27. Or in response to a corporate directive that you participate supportively in a “Coming Out Day” you respectfully decline** because you find homosexual practice to be morally offensive. Or in an **attempt to get exempted from the email list of the company’s “GLBT” organization** (gay, lesbian, bisexual, and transgender) you send an email requesting to be removed from the list because you think homosexual practice is immoral. In all these circumstances, **you are far more likely to be disciplined or fired, and to have no legal redress, with an “ENDA” in place** than without it.
- As a means of protecting the company against “discrimination” lawsuits, **your employer may require you to attend indoctrination seminars** that stress that homosexuality is as morally neutral as race or sex; and, moreover, **to participate in “coming out” celebrations** in the workplace that affirm “sexual diversity.” Your employer may further **prohibit**, under

ministries are directly controlled by a church; and many will provide ‘secular’ products (such as food, shelter, counseling, or legal services that are not of themselves religious). In short, the definition is so vague that a ministry sued under ENDA will suffer complex, hard-fought litigation just to prove itself ‘religious’ and end the case.”

⁹ All of the examples below have already occurred in parts of the United States or in Canada where the homosexualist agenda is far more advanced. For documentation see pp. 10-18 of my online article “Bearing False Witness: [David] Balch’s Effort at Demonization and His Truncated Gospel” (2004, 23 pgs.; online: <http://www.robgagnon.net/articles/homoBalchFalseWitness.pdf>); also, Alan Sears and Craig Osten, *The Homosexual Agenda: Exposing the Principle Threat to Religious Freedom Today* (Nashville: Broadman & Holman, 2003). In addition to the abridgement of liberties mentioned below the Alliance Defense Fund letter mentions another matter: “HR 3685 includes . . . an odious provision that prohibits an employer from using marriage as a requirement for any job. Thus, a marriage counseling ministry could not require its counselors to be married, nor could a ministry to wayward youth require that its house parents be married.”

penalty of termination, **any conversation, written communication, or act that calls homosexual practice into question.**

- While homosexual and bisexual persons will have their jobs protected under this act, your job status and advancement will have no such protections if you manifest “discriminatory” words against homosexual behavior. Indeed, **not only will your religious convictions not be protected in a secular workplace, but also they will be treated as “bigotry” akin to racism and sexism.** Corporations don’t generally hire or promote bigots. It is not good for business.
- **Monitoring of “discriminatory” beliefs toward homosexual and bisexual persons could even extend,** at least in the case of white collar employees, **outside the workplace.** For example, if a school teacher has published in a newspaper a letter that advocates that society not provide legal incentives for homosexual practice, or offers counseling for those seeking to come out of the homosexual life, the courts could rule (as the British Columbia Supreme Court ruled a couple of years ago) that the employer is entitled to take such discriminatory views into consideration in suspending or firing the employee.
- Although the bill currently does not “require or permit” **quotas** based on minority sexual orientation status, corporate executives know that it will serve their interest under such a bill to increase the number of employees who identify as homosexual or bisexual and to promote such employees as a safeguard against possible discrimination lawsuits. With the passage of this bill, *the burden of proof will shift decisively to the employer* to establish that no discrimination against homosexual or bisexual persons has taken place. **Legal intimidation will exert a remarkable effect in making the workplace an advocacy center for the homosexual lifestyle.** Eventually, too, we can expect even this language against quotas to be removed from the law.

In short, ENDA will *endanger* your right in the workplace not to be accosted on a regular basis by a homosexualist agenda. It will become an “employment discrimination act” against any who rightly find the equation of homosexuality with ethnicity and gender to be deeply flawed. Homosexuality is an impulse to behave in ways discordant with embodied existence (i.e. unnatural),¹⁰ not 100% heritable, and open to some change; race

¹⁰ In terms of anatomy, physiology, and psychology men and women are obviously each other’s embodied sexual counterpart. The logic of a heterosexual bond implies the merger of one person with his or her sexual “other half,” the two primary sexes uniting into a single sexual whole (“one flesh”). The logic of a homosexual bond is the self-deception that each partner is only half of his or her own sex, which represents a dishonoring of the sexual integrity of the individual’s intact maleness or femaleness. It also involves the odd situation of becoming erotically aroused by the essence of one’s own sex, a form of sexual narcissism. Adult, consensual homosexual practice is comparable to adult, consensual incest inasmuch as each involves an attempted merger with another who is already too much of a formal or structural same (one on the level of sex or gender, the other on the level of family or blood relatedness). A two-sexes prerequisite is actually the foundation for a prohibition of multiple-partner sexual bonds, given that the limitation of sexual bonds to two and only two persons concurrently is dependent on the principle of the “twoness” or

and sex (gender) are more a state of being than an impulse to do something and certainly concordant with one's embodied existence, are 100% congenitally determined and heritable, and are more or less culturally immutable.

This bill is not about guarding against massive discrimination against homosexual persons comparable to what African Americans have historically experienced. Persons who engage in homosexual practice have comparable individual incomes to heterosexuals. On average, they have more disposable income than heterosexuals since homosexual relationships are far more often characterized as double-income, no-children arrangements.¹¹ **No, this bill is about advancing the homosexualist agenda and marginalizing in the workplace those who regard homosexual practice as immoral.**

In today's political climate, certainly in white collar jobs, one is more likely to suffer employment discrimination by expressing disagreement with homosexual practice than by engaging in homosexual practice. This is certainly true of the entertainment industry, most media outlets, most educational institutions, most Fortune 500 companies, and so on. We should be pushing for an ENDA that protects the job security of those who believe in a male-female prerequisite for valid sexual relations, not signing off on a bill that will lead to codifying us as bigots to be oppressed.¹²

binary/dimorphic character of the sexes. Because a male-female sexual bond brings together the two primary sexes a third party is neither needed nor desirable.

¹¹ Even the touted work of homosexual activist M. V. Lee Badgett, a professor of economics at the University of Massachusetts-Amherst, reveals this if one looks behind her rhetoric to the actual data. See her "Income Inflation: The Myth of Affluence among Gay, Lesbian, and Bisexual Americans" (online: <http://www.thetaskforce.org/downloads/reports/reports/IncomeInflationMyth.pdf>; retrieved 10/23/07). Even Badgett has to admit that homosexual women earn as much or more than heterosexual women and that the average homosexual man earns only slightly less (5%) than the average heterosexual man. She claims that when the statistics are controlled for education, geographical location, occupation, experience, and race, homosexual men make a quarter less than heterosexual men. Even if this claim were accurate, the reason for the disparity could equally be due to factors other than workplace discrimination (for example, the greater career drive for heterosexual men who have a family to support or the greater proclivity to sexually dissolute living on the part of homosexual men), especially since lesbian women appear to experience no such job discrimination. At any rate, differences between homosexual men and heterosexual men are virtually erased by the distinctive demographic setting of homosexual men. Moreover, male same-sex couples have household incomes up to 24% higher than heterosexual married couples. Compare and contrast the take on "gay affluence" by Robert Witeck and Wes Combs, homosexual authors of *Business Inside Out: Capturing Millions of Brand Loyal Gay Consumers* (Kaplan Publishing, 2006) whose DC-based firm, Witeck-Combs Communications, Inc., specializes in assessing LGBT marketing trends. "It [i.e. 'gay affluence'] is definitely a myth and perhaps the most misunderstood fact about gays and lesbians. We are not wealthier. We make about the same amount of money as our non-gay counterparts. Because only about 20 percent of gay and lesbian households have children in them, we tend to have more discretionary income. What others spend on child care related costs we often spend on ourselves (or save). In many cases we are also dual income households, which coupled with no children gives us more money to spend than the average consumer" (online: <http://www.queercents.com/2006/11/02/ten-money-questions-for-bob-witeck-wes-combs/>; retrieved 10/23/07).

¹² I have not addressed the question of whether there might be circumstances in secular employment where a person's active homosexual lifestyle could have employment repercussions (certainly this is what homosexual activists argue with respect to persons who express disagreement with the homosexual life). Yet it is question worth exploring. One can make a good case that homosexual practice is so incongruous with embodied existence that it is at least as bad an offense, or more so, as adult-consensual incest, polyamory, or adultery (certainly this is Scripture's view of things, as I have shown elsewhere). Are there

some secular white-collar positions that should be denied to employees who trumpet the fact of having ongoing sexual relations with an adult who is a close blood relation (say, a parent or sibling), or of actively engaging in adulterous affairs? Does an employer have the right to terminate the employment of someone who brings his sexual partner, who happens to be his mother or sister or mistress, to company gatherings?

In other words, are there *any* secular employment situations where there ought to be a right to not hire, or a right to terminate, someone who actively engages in, and flaunts, egregious immoral (but not necessarily criminal) behavior? One might say that people fornicate all the time and don't get fired. Agreed. But homosexual practice is more comparable to serial unrepentant incest or adultery. Probably for most secular positions, especially blue collar positions, virtually anything should go. However, in responsible white-collar positions, morals are sometimes considered in the hiring and promotion process, at least as regards some particularly revolting behaviors that shock normal sensibilities (certainly adult-consensual incest and polygamy would qualify, sometimes repeated adultery, and definitely making racist or sexist comments). Homosexual activists and their allies who argue that “discriminatory” comments against the homosexual life should affect a person’s employment are also using a morals test, however misguided. The question is not whether to have a morals test, it seems to me, but where to draw the line.

If one has in mind someone who experiences same-sex attractions but who is quiet and doesn’t adopt a high-profile advocacy stance (like spearhead a corporate GLBT advocacy group) and who doesn’t insist that the company give at least implicit validation of his or her same-sex sexual relationship (say, at company gatherings where spouses are invited), then it is easier to be sympathetic to a non-discrimination policy. But if one has in mind the opposite of this—high-profile, abrasive persons determined to change the entire company ethos to cater to his or her immorality—then the whole matter becomes more problematic.