

JULY 8, 2014

Joint Statement on Withdrawal of Support for ENDA

The following national organizations have signed onto the below statement: American Civil Liberties Union; Gay & Lesbian Advocates & Defenders; Lambda Legal; National Center for Lesbian Rights; and Transgender Law Center.

Joint Statement on Withdrawal of Support for ENDA and Call for Equal Workplace Protections for LGBT People

The provision in the current version of the Employment Non-Discrimination Act (ENDA) that allows religious organizations to discriminate based on sexual orientation and gender identity has long been a source of significant concern to us. Given the types of workplace discrimination we see increasingly against LGBT people, together with the calls for greater permission to discriminate on religious grounds that followed immediately upon the Supreme Court's decision last week in *Burwell v. Hobby Lobby*, it has become clear that the inclusion of this provision is no longer tenable. It would prevent ENDA from providing protections that LGBT people desperately need and would make very bad law with potential further negative effects. Therefore, we are announcing our withdrawal of support for the current version of ENDA.

For decades, our organizations have challenged anti-LGBT workplace discrimination in the courts and worked for the passage of inclusive non-discrimination laws at the local, state, and federal level. We do this work because of the devastating toll workplace discrimination has had, and continues to have, on the lives of LGBT people. It is unacceptable that in the year 2014, men and women are forced to hide who they are or whom they love when they go to work.

The current patchwork of legal protections at the state and local level has left LGBT people vulnerable to discrimination. For this reason, we have supported federal legislation to explicitly protect LGBT people from discrimination in the workplace, and have urged President Obama to sign an executive order banning federal contractors from discriminating on the basis of sexual orientation and gender identity or expression.

ENDA's discriminatory provision, unprecedented in federal laws prohibiting employment discrimination, could provide religiously affiliated organizations – including hospitals, nursing homes and universities – a blank check to engage in workplace discrimination against LGBT people. The provision essentially says that anti-LGBT discrimination is different – more acceptable and legitimate – than discrimination against individuals based on their race or sex. If ENDA were to pass and be signed into law with this provision, the most important federal law for the LGBT community in American history would leave too many jobs, and too many LGBT workers, without protection. Moreover, it actually might lessen non-discrimination protections now provided for LGBT people by Title VII of the Civil Rights Act of 1964 and very likely would generate confusion rather than clarity in federal law. Finally, such a discrimination provision in federal law likely would invite states and municipalities to follow the unequal federal lead. All of this is unacceptable.

The Supreme Court's decision in Hobby Lobby has made it all the more important that we not accept this inappropriate provision. Because opponents of LGBT equality are already misreading that decision as having broadly endorsed rights to discriminate against others, we cannot accept a bill that sanctions discrimination and declares that discrimination against LGBT people is more acceptable than other kinds of discrimination.

Our ask is a simple one: Do not give religiously affiliated employers a license to discriminate against LGBT people when they have no such right to discriminate based on race, sex, national origin, age, disability, or genetic information. Religiously affiliated organizations are allowed to make hiring decisions based on their religion, but nothing in federal law authorizes discrimination by those organizations based on any other protected characteristic, and the rule should be the same for sexual orientation and gender identity or expression. Religious organizations are free to choose their ministers or faith leaders, and adding protections for sexual orientation and gender identity or expression will not change that.

These concerns are not hypothetical. Increasingly, this is what employment discrimination against LGBT people looks like. Take the example of Matthew Barrett. In July 2013, Matthew was offered a job as food services director at Fontbonne Academy, a college prep high school in Milton, Massachusetts that is affiliated with the Roman Catholic Sisters of St. Joseph of Boston. Fontbonne Academy has employees and admits students of various faiths. Yet, two days after Matthew listed his husband as his emergency contact on the standard employment paperwork, and despite twenty years of work in the food services industry, his job offer was rescinded. Although nothing about the food services job involved religious rituals or teaching, Matthew was told by an administrator that the school was unable to hire him because "the Catholic religion doesn't recognize same-sex marriage." The current version of ENDA would authorize this sexual orientation discrimination.

As the national outcry against SB 1062 in Arizona (and similar proposals in numerous other states) demonstrates, the American people oppose efforts to misuse religious liberty as an excuse to discriminate against LGBT people. It is time for ENDA (and the LGBT non-discrimination executive order for federal contractors) to reflect this reality. Until the discriminatory exemption is removed so that anti-LGBT discrimination is treated the same as race, sex, national origin, age, disability, or genetic information under federal workplace laws, we think ENDA should not move forward in Congress. In addition, we will oppose any similar provisions at the state and local level. We are hopeful that the many members of Congress who support this historic, critically important legislation will agree that singling out LGBT people for an unequal and unfair exemption from basic workplace protection falls unacceptably short of the civil rights standards that have served our nation well against other types of discrimination for fifty years. We stand ready and eager to work with them to achieve the long-sought goal of explicit, effective federal non-discrimination protections for LGBT people.