



April 22, 2019

The Honorable Suzanne Bonamici
Chair
House Committee on Education and Labor, Subcommittee on Civil Rights and Human Services
Washington, D.C. 20515

The Honorable James Comer
Ranking Member
House Committee on Education and Labor, Subcommittee on Civil Rights and Human Services
Washington, D.C. 20515

Dear Chair Bonamici and Ranking Member Comer,

We write to provide the views of ADL (the “Anti-Defamation League”) for the April 9 Subcommittee on Civil Rights and Human Services hearing on “The Equality Act (H.R. 5): Ensuring the Right to Learn and Work Free from Discrimination.” We would ask that this statement be included as part of the official hearing record.

ADL is a leading anti-hate organization that has been working to secure justice and fair treatment for all since its founding in 1913. In seeking to protect civil rights for all, ADL recognizes the importance of comprehensive laws prohibiting discrimination on the basis of immutable characteristics, including sex, sexual orientation, and gender identity. We support the Equality Act and believe its enactment would be a watershed moment in our nation’s history and an appropriate recognition that we will no longer tolerate discrimination against LGBTQ Americans in education, health, housing, public spaces, or employment.

While there has been significant progress towards LGBTQ equality and rights in this country in recent years, there have also been some unfortunate setbacks. Last summer’s Supreme Court ruling in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* – allowing, under those particular circumstances, a Colorado baker to refuse to sell a wedding cake to a same-sex couple – was a wake-up call, and underlined the need for further legislative action. That narrow Court decision, while disappointing, reaffirmed the rights of LGBTQ individuals to be free from discrimination, and left Colorado’s nondiscrimination protections in place. But it also left us fearing that *even when there were specific laws in place to protect LGBTQ communities* – which is too often not the case – those laws were vulnerable to additional challenges.

Just today, the United States Supreme Court agreed to hear three cases pertaining to workplace discrimination against LGBTQ Americans. The Court granted writs of certiorari in *Bostock v. Clayton County*, *Altitude Express v. Zarda*, and *Harris Funeral Homes v. EEOC*. At issue in each of these separate cases is whether Title VII of the Civil Rights Act of 1964 protects LGBTQ individuals from workplace discrimination. In each of these cases, courts previously ruled that Title VII of the Civil Rights of 1964 covers sexual orientation discrimination as a form of gender stereotyping that is impermissible. The uncertainty in current law underscores the essential need to codify the full range of protections afforded by the Equality Act. ADL joined coalition

amicus briefs making this point in *Altitude Express v. Zarda*¹, and *Harris Funeral Homes v. EEOC*².

There are many reasons for the LGBTQ community to feel particularly vulnerable in America in 2019. The current administration has been noticeably hostile to LGBTQ rights, for example by rolling back previous guidance to schools that discrimination on the basis of gender identity is prohibited under Title IX, opposing efforts by transgender students to use bathrooms corresponding to their gender identity, banning transgender individuals from military service, and arguing in court briefs that Title VII of the Civil Rights Act does not protect gender identity. The administration has also continued to propose and enforce policies that allow for discrimination against LGBTQ people in the name of religion, reflected most recently in two administrative directives. One, from the Department of Labor, allows religiously affiliated organizations receiving federal funding to discriminate in hiring and other employment decisions. The second, from the Department of Health and Human Services, permits a government-funded, faith-based adoption agency to discriminate on the basis of religion in choosing foster care and adoption services program beneficiaries.

Unfortunately, too few states have comprehensive laws that can serve as bulwarks against these disturbing directives from Washington. Today, LGBTQ individuals remain unprotected from discrimination in 30 states and are facing troubling levels of hostility and prejudice across the country. Lawmakers in many states are continuing to strip LGBTQ rights or to consider legislation that would sanction government discrimination. For example, Tennessee House Bill 563, currently pending, would immunize private employers and businesses from local laws which prohibit discrimination against LGBTQ individuals. Another pending bill, Texas Senate Bill 17, is a sweeping piece of legislation which would empower and protect discriminatory behavior across hundreds of professional activities by creating dangerous "religious exemptions." If an occupation holder were to claim that a discriminatory action was motivated by a "sincerely held religious belief," the licensing agency that oversees the occupation would have no recourse to remedy that discrimination.

It is important for us to note that ADL believes deeply in the religious freedom mandated by the First Amendment. However, we believe that mandate must be viewed as a shield protecting individuals from government actions against them, and not as a sword to be used to thwart anti-discrimination laws or violate the civil rights or the dignity of others. The government has a clear, compelling interest and responsibility to take firm action against discrimination, and the Equality Act is an appropriate and important step in fulfilling that responsibility.

Throughout our history, ADL has understood that civil rights legislation serves more than one purpose. First and foremost, this kind of legislation provides necessary protections for the most vulnerable in our society. And, also importantly, such legislation sends a message that Americans care, that we believe in the fundamental principles of justice and equality on which this nation was founded and the basic dignities of all Americans.

¹ <https://www.adl.org/education/references/amicus-briefs/zarda-v-altitude-express-inc-usca-2nd-circuit-2017>

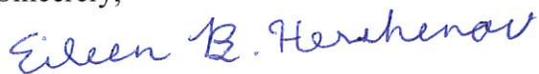
² <https://www.adl.org/education/references/amicus-briefs/equal-employment-opportunity-commission-v-harris-funeral-homes>

The Equality Act represents an historic opportunity to ensure that, no matter where in this country they live, Americans are protected from discrimination based on sex, sexual orientation, and gender identity across virtually every area of daily life. The Equality Act is about ensuring LGBTQ Americans can live their lives with dignity and respect.

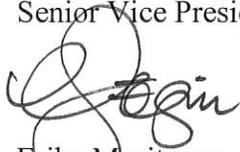
In her powerful remarks to the House Judiciary Committee earlier this month, Representative Pramila Jayapal spoke about why the Equality Act is so important to her personally. She spoke about her child, who would be directly impacted by this legislation, and how that child finally feels free to be who they are. "With that freedom," Rep. Jayapal said "comes a responsibility, for us as legislators, to legislate with love and not fear." We at ADL could not agree more.

ADL therefore welcomes the work of this Subcommittee on the Equality Act and urges its enactment as a priority for the 116th Congress.

Sincerely,



Eileen B. Hershenov
Senior Vice President, Policy



Erika Moritsugu
Vice President, Government Relations, Advocacy, and Community Engagement



Steven M. Freeman
Vice President, Civil Rights