

11 Myths About H.R. 5, the Equality Act of 2021

MYTH 1: THE EQUALITY ACT SIMPLY PUNISHES DISCRIMINATION AGAINST PEOPLE WHO IDENTIFY AS GAY OR TRANSGENDER

Fact: The Equality Act—introduced as H.R. 5 in the House of Representatives on February 18, 2021—makes mainstream beliefs about marriage, as well as basic biological facts about sex differences, punishable under the law. Every person should be treated with dignity and respect and no one should face discrimination. But the Equality Act makes discrimination the law of the land by forcing Americans to conform to government-mandated beliefs under the threat of life-ruining financial and criminal penalties. The 1964 Civil Rights Act outlawed state-sanctioned discrimination that caused systematic economic and material harm to black Americans. The Equality Act is different: It forces every American to agree with controversial government-imposed ideology on sexuality or be treated as an outlaw. The Equality Act demolishes existing civil rights and constitutional freedoms.

MYTH 2: THE EQUALITY ACT PRESERVES RELIGIOUS FREEDOM

Fact: The Equality Act guts the Religious Freedom Restoration Act (RFRA) and threatens constitutional freedoms by eliminating conscience protections from the Civil Rights Act. If enacted, H.R. 5 would force employers, medical professionals, educators, and religious organizations to allow men into women’s shelters, pay for or perform sex-change operations, and engage in speech that violates their consciences. Faith-based adoption and foster care agencies would be forced to violate their belief that every child deserves a mother and a father. Section 2(a)(2) of the bill refers to the belief that marriage is between a man and a woman as

a “sex stereotype.” This stigmatizes the beliefs of hundreds of millions of Americans, including Catholics, Evangelicals, Jews, Mormons, and Muslims.

MYTH 3: THE EQUALITY ACT DOES NOT EXPAND THE SCOPE OF FEDERAL CIVIL RIGHTS LAW

Fact: By expanding the definition of “public accommodations” under Title II of the Civil Rights Act to 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,” many more individuals and establishments would, in fact, become liable to discrimination claims, including doctors who do not want to perform abortions.

MYTH 4: THE EQUALITY ACT IS IRRELEVANT TO ABORTION

Fact: H.R. 5 endangers unborn children. The Equality Act opens the door to taxpayer funding for elective abortions, which the vast majority of Americans oppose, regardless of political affiliation. The bill does not contain any conscience protections for those with moral or religious objections to paying for or performing abortions. It also takes away judicial relief by blocking claims based on the RFRA.

The Equality Act expands the term “sex” to go far beyond the state of being male or female, and includes “pregnancy, childbirth, or related medical condition.” Both the Equal Employment Opportunity Commission and the 3rd Circuit Court have interpreted “related medical condition” to include abortion. This expanded

definition of sex applies to public accommodations, which—under the Equality Act—includes providers of “health care.” This definition also applies to section 1557 of the Affordable Care Act (ACA), which is the act’s nondiscrimination provision guaranteeing that people will not be denied benefits in a federally run or federally funded health program.

Section 1557 of the ACA looks to Title VI of the Civil Rights Act, which addresses nondiscrimination in federally assisted programs, to interpret what constitutes discrimination. If the Equality Act were to pass, section 1557 nondiscrimination regulations could be used against providers who refuse to perform abortions, or against hospitals that receive federal funding and do not provide abortions. The Reproductive Blueprint promoted by Planned Parenthood, NARAL Pro-Choice America, and other abortion industry actors specifically calls on the Biden Administration to interpret section 1557 in this manner.

MYTH 5: THE EQUALITY ACT IS GOOD FOR WOMEN AND UPHOLDS TITLE IX OF THE EDUCATION AMENDMENTS ACT, WHICH PROHIBITS SEX DISCRIMINATION AGAINST GIRLS AND WOMEN

Fact: The Equality Act’s changes to Title VI of the Civil Rights Act do *not* uphold Title IX of the 1972 Education Amendments Act. Gender-identity policies will require biological males to be permitted to participate in female-only activities. In sports, the physical bodies of biological males (even after two years on estrogen) put them at an obvious unfair advantage over female athletes, who are losing out on opportunities and scholarships designed for girls and women. Three brave female high school athletes in Connecticut are suing the state because two boys who identify as girls defeated them in track and field and demolished the state records held by 15 other girls.

MYTH 6: SAFETY AND PRIVACY IN SEX-SPECIFIC SPACES WILL NOT BE DIMINISHED

Fact: All single-sex spaces will be open to both sexes under the Equality Act. The Equality Act adds sexual orientation and gender identity rules to Title III of the Civil Rights Act on “public facilities” as well as to public accommodations (Title II) and federal funding (Title VI). This would create a nationwide transgender policy in single-sex facilities. It would affect everything from girls’ and women’s showers and locker rooms to women’s shelters and women’s prisons, endangering safety and diminishing privacy. Giving people blanket permission to enter private spaces for the opposite sex enables sexual predators to exploit the rule and gain easy access to victims.

MYTH 7: THE EQUALITY ACT TREATS ALL STUDENTS FAIRLY, PROMOTES INCLUSION, AND CANNOT AFFECT SCHOOL CURRICULA

Fact: By adding sexual orientation and gender-identity rules to the Civil Rights Act’s Title IV on “desegregation of public education,” the Equality Act could pave the way for K–12 federal courts to require sexual orientation and gender-identity curricula the same way they required black history curricula.

All children deserve to learn in an environment where they and their views are treated with respect. Imposing one political viewpoint on students about questions of gender and sexual orientation stigmatizes and excludes those who hold disfavored (read: mainstream) views. Denying a child the right to a supportive educational environment effectively denies that child meaningful access to the right to an education.

Additionally, changing Title VI to include sexual orientation and gender identity means that any school, even private and parochial schools that receive federal assistance, would have to adopt transgender policies in sports and private facilities.

MYTH 8: DOCTORS WILL NOT BE FORCED TO PERFORM SEX-CHANGE OPERATIONS OR PRESCRIBE HORMONES FOR “GENDER AFFIRMATION”

Fact: As a result of the expanding definition of public accommodations, as well as changing federal funding requirements, doctors (and counselors) could be punished for treating gender dysphoria according to their own best medical judgment. Even a referral to another doctor could be a violation of the Civil Rights Act. If a doctor performs a double mastectomy to treat cancer, she must also do so for a woman who identifies as a man. Transgender individuals have already sued hospitals for discrimination in New Jersey and California because the hospitals refused to perform surgeries, including mastectomies, for “gender affirmation.” This, despite the fact that evidence has shown that “transitioning” does not provide any lasting mental health benefits. In fact, many patients who undergo a sex change end up with damage to their physical health, such as heart problems and decreased bone density, as well as loss of fertility.

MYTH 9: PARENTAL RIGHTS WILL REMAIN UNCHANGED

Fact: The Equality Act’s politicization of medicine and education through gender ideology will undermine parental rights. Since most schools will be pressured to comply with sexual-orientation and gender-identity policies, parents will have limited educational choices for their children. Those who do not believe that their daughters should have to compete against biological males in sports, or who do not believe their daughters and sons should have to share bathrooms with members of the opposite sex, will be hard pressed to find schools where this is not happening. Parents should not have to sacrifice their children’s safety in order to attend school.

Counseling that has proven to help children suffering from gender dysphoria reconcile with their bodies will no longer be considered an

acceptable approach. This means that parents will be left without therapeutic alternatives that do not cause irreversible harm to their children’s bodies. A judge in Ohio terminated the rights of parents who opposed administering testosterone to their underage daughter and wanted her to go to counseling for gender dysphoria instead.

MYTH 10: THE EQUALITY ACT HELPS CHILDREN IN NEED OF FOSTER HOMES AND ADOPTION

Fact: The Equality Act hurts vulnerable children by punishing faith-based adoption and foster-care agencies that believe that every child deserves both a mother and a father and that children’s bodies should not be irreversibly harmed by hormonal or surgical interventions due to gender dysphoria. Imposing this radical ideology on child-welfare providers will reduce the number of “forever families” for the more than 424,000 foster children in need of them. Adding sexual-orientation and gender-identity requirements to laws in Massachusetts and Illinois diminished the supply of foster families at the same time that more children needed them due to the opioid crisis.

MYTH 11: THE SUPREME COURT’S DECISION IN *BOSTOCK V. CLAYTON COUNTY, GEORGIA*, REQUIRES THE EQUALITY ACT’S CHANGES TO CIVIL RIGHTS LAW

Fact: The Equality Act goes far beyond the Supreme Court’s 2020 *Bostock* ruling. While *Bostock* invented a misguided theory of sex discrimination in employment law, it did not redefine “sex” to include sexual orientation and gender identity. But the Equality Act does. *Bostock* was limited to employment law; the Equality Act adds “sexual orientation and gender identity” to all of the nation’s civil rights laws. Because *Bostock* was limited to employment, it said nothing about schools, sports, or medicine. The Equality Act adds sexual orientation and gender identity to all of them.