

February 19, 2021

(202) 626-8820

RE: Opposition to the Equality Act (H.R. 5)

Dear Member of Congress:

The House of Representatives is expected to take up the Equality Act (H.R. 5) next week.

H.R. 5 contains language that could be construed to create a right to demand abortion from health care providers, and likely would place at risk the authority of state and federal governments to prohibit taxpayer-funded abortions.

Historically, when Congress has addressed discrimination based on sex, rules of construction have been added to prevent requiring funding of abortion or nullifying conscience laws. **Since no rule of construction is included in the Equality Act, National Right to Life urges you to oppose the bill and will include a House roll call on this measure in our scorecard of key pro-life votes of the 117th Congress.**

Section 9 of the Equality Act would amend the Civil Rights Act of 1964 by defining “sex” to include “pregnancy, childbirth, or a related medical condition.” It is well established that abortion will be regarded as a “related medical condition.” See 29 C.F.R. pt. 1604 App. (1986) and *Doe v. CARS Protection Plus, Inc.*, 527 F.3d 358 (3d Cir. 2008).

H.R. 5 goes on to expand this anti-discrimination provision by stating that “pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions,” and would add “establishments that provide health care” to the list of covered “public accommodations.” What these provisions will mean, taken together, is that health care establishments and individuals providing healthcare will be required to provide abortion as a “treatment” for pregnancy.

H.R. 5’s new definition of “public accommodations” includes any “establishment that provides health care, accounting, or legal services.” The bill has an additional rule of construction that the term “establishment” “shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program” and “shall not be construed to be limited to a physical facility or place.” These provisions would apply to individual health care providers who object to abortion, including those with religious objections. Indeed, the bill explicitly overrides the protections contained in existing federal

law under the Religious Freedom Restoration Act, 42 U.S.C. 2000bb et seq.

These pro-abortion requirements may also apply to non-physical entities such as federal and state governments that determine health care coverage under Medicaid. H.R. 5 does include a reference to Pub. L. 88-352, title VII, § 703, which prevents employers from being forced to offer abortion coverage. However, there is no language to thus protect individual health care providers. Also, there is no language applying to the authority of federal or state governments (non-physical entities) to prohibit taxpayer-funded abortions, as under the Hyde Amendment. The pro-abortion National Partnership for Women and Families explains, “women would be able to challenge denials of reproductive health care.”

For more on the abortion funding connection, see here:


<https://www.nrlc.org/uploads/fedleg/equalityact/MemorandumHydeandHR5.pdf>

In short, the Equality Act may be construed to create a right to demand abortion from health care providers and to destroy conscience protections for health care providers.

National Right to Life urges you to oppose the bill and will include a House roll call on this measure in our scorecard of key pro-life votes of the 117th Congress.

Should you have any questions, please contact us at (202) 378-8863, or via e-mail at jpopik@nrlc.org. Thank you for your consideration of NRLC’s position on this important legislation.

Respectfully submitted,



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President



David N. O’Steen, Ph.D.
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