

# Messenger

A quarterly publication by the Missouri Catholic Conference | Issue II, 2021



## *The Equality Act & Gender Ideology*

### A CATHOLIC PERSPECTIVE

The Equality Act is a piece of legislation making its way through Congress that would add “sexual orientation” and “gender identity” to U.S. federal nondiscrimination laws. It has been proposed in each of the terms of Congress from 2015 to 2021. The Act has passed the U.S. House of Representatives the last two Congressional terms (most recently on February 25, 2021), but has yet to pass the U.S. Senate. The Equality Act poses serious concerns for religious institutions and for people of faith who hold a traditional view of marriage and who believe that human beings are created male and female. In a letter to Congress dated February 23, 2021, five United States Conference of Catholic Bishops (USCCB) committee chairmen wrote Congress to express their concerns about passage of this bill.

“The Equality Act,” they wrote, “purports to protect people experiencing same-sex attraction or gender discordance from discrimination. But instead, the bill represents the imposition by Congress of novel and divisive viewpoints regarding ‘gender’ on individuals and organizations. This includes dismissing sexual difference and falsely presenting ‘gender’ as only a social construct. As Pope Francis has reflected, however, ‘biological sex and the socio-cultural role of sex (gender) can be distinguished but not separated. ... It is one thing to be understanding of human weakness and the complexities of life, and another to accept ideologies that attempt to sunder what are inseparable aspects of reality.’ Tragically, this Act can also be construed to include an abortion mandate, a violation of precious rights to life and conscience.”

In this edition of *Messenger*, the MCC looks at the Equality Act from a Catholic perspective, identifying the problems it presents to religious ministries and organizations.

*page three :*

*A new episode of*

*MCC from the Capitol!*



MCC FROM THE

**CAPITOL**

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# Q&A **The Equality Act**



**The USCCB has provided helpful information about the Equality Act in many forms on its website, including a Q&A, which we have printed excerpts from below. To view the entire Q&A and other resources regarding The Equality Act on the USCCB website, scan this QR code.**

*To scan a QR code, open the camera app on your phone, and focus the camera on the QR code. A link will appear directing you to the available content.*



## **What is the Equality Act?**

The Equality Act is a comprehensive bill in Congress that would add “sexual orientation” and “gender identity” to a range of federal nondiscrimination laws.

## **What does the Equality Act do?**

The Equality Act would add the categories of “sexual orientation” and “gender identity” to the definition of “sex” (§ 9), and add “sex” where it is not already present, in the Civil Rights Act of 1964 (§§ 3-8); government employment statutes (§ 7); the Fair Housing Act (§ 10); the Equal Credit Opportunity Act (§ 11); and jury selection rules (§ 12).

The Civil Rights Act requires nondiscrimination on the basis of select classes of persons in public accommodations (Title II), employment (VII), federal funding and recipients’ use thereof (VI), public facilities (III), and public education (IV). In addition to effectively adding new classes to these titles, the Equality Act expands the definition of “public accommodations” from restaurants, hotels, and theaters to nearly every consumer service or place of commerce, gathering, or charity, notably including health care (§ 3). It also expressly makes available restrooms, locker rooms, and dressing rooms to persons according to their “gender identity” rather than natural sex (§ 9).

The Equality Act explicitly exempts itself from the requirements and protections of the Religious Freedom Restoration Act of 1993 (§ 9). This would be unprecedented, as no federal law has ever done so before, and it demonstrates the Equality Act’s radical denial of tolerance to people of faith who do not agree to the government’s view of sexuality as established by the Act.

## **Who are the people that the Equality Act is designed to help?**

Supporters assert that the Equality Act is needed to protect people who identify as “LGBT” from discrimination in a range of public and professional settings, including employment and the provision of consumer, government, or charitable services. They claim that this is necessary to prevent economic, legal, and emotionally-experienced “dignitary” harms.

Catholics oppose unjust discrimination or harassment that baselessly deprive any person of basic needs, goods, or dignity. Each and every human person is made in the image and likeness of God and, as such, bears inviolable dignity. The Church teaches that persons with same-sex attractions in particular must be “accepted with respect, compassion, and sensitivity...” and that society is to avoid “unjust discrimination in their regard.” Similar principles can also apply to those experiencing gender dysphoria or feelings of gender incongruence. This means that Catholics support appropriate nondiscrimination policies, for example, those that support the right of every individual to decent employment regardless of their sexual inclinations.



## **Whom would the Equality Act hurt? Are there examples?**

The Equality Act would legally and socially injure many Americans. These effects have been demonstrated in states and localities where similar laws already exist.

First and foremost, the Equality Act hurts women and girls. The Equality Act would fortify regressive, sexist stereotypes by enshrining the notion that subjective feelings and preferences (such as hobbies, attire, emotional patterns, or style of interaction) are what define a woman or a man.

By redefining “sex” without physical meaning, the Equality Act would also remove legal recognition of women and girls, such as in Title IX, and risk eviscerating their hard-won consideration in areas including student scholarships and athletics. College sports positions, and the scholarship opportunities attached to them, could be taken by men who self-identify as women under the Equality Act’s terms. Many sex-specific environments that have cultivated support, growth, and success among women in other arenas, such as in business and entrepreneurship, could be ended.

The legislation also diminishes safety in intimate spaces with its restroom and locker room mandate to provide access based on “gender identity.” While most people who identify as “transgender” do not seek to harm others (in fact, many seek to avoid harm themselves), these laws open the doors of very personal facilities to others who would do harm.

Even without direct, malicious harm, however, sharing of intimate facilities between the sexes offends privacy and betrays modesty.



People have a responsibility, and therefore a right, to practice modesty, to refuse “to unveil what should remain hidden.” This not only involves the right to not be seen by the opposite sex when in a state of undress or tending to bodily functions, but to not be forced to see others of the opposite sex when they are in such a state.

“Transgender”-identifying people themselves may be hurt by the Equality Act. Its nondiscrimination mandate for health care as a “public accommodation” effectively promotes “gender affirmative” hormone therapy and surgical procedures, with irreparable consequences. To be sure, health care providers should welcome with compassion, and provide healing care to, every individual in need. The Equality Act, however, would depart from ensuring service to people and would federally prescribe specific procedures or treatments. “Gender reassignment surgery” has not been substantially associated with improved long-term health outcomes, which the Centers for Medicare and Medicaid Services under the Obama Administration effectively described in 2016 in its declining to issue a nationwide coverage requirement. Tragically, “sex reassignment” surgeries appear to do little to ameliorate the already-high long-term rate of suicide among those identifying as “transgender.”

Health care providers, both individual professionals and institutions as well as insurers, would lose the ability to exercise their best medical judgment under the “public accommodation” nondiscrimination mandate and be forced to perform or cover “gender affirming” procedures, even if they find them to be detrimental to patients’ health, and even in the case of minors. Catholic health care providers compassionately serve everyone who comes to them, regardless of characteristics or background. Nondiscrimination thus centered on who is served, and oriented toward every patient as an individual, is a positive goal, but when it mandates what procedures are performed for what conditions, that is another matter. The medical community, rather than being subjected to legislative mandates with uncertain long-term outcomes, should be free to develop ways of treating gender dysphoria that consider the health and integrity of the whole person.

Parents could be at risk of losing custody of their children for declining “gender affirming” medical procedures that have irreparable consequences. The Equality Act’s health care nondiscrimination provision takes for granted that puberty-blocking, hormonal treatment, and surgical procedures are both necessary and standard, even though this has not been proven and in many cases is still an off-label use of medication. Under the Equality Act, refusing this type of treatment could be used by states to take children away from their parents, as has already occurred in certain places such as Cincinnati in 2018. In addition, the Equality Act’s provision mandating nondiscrimination in programs and services receiving federal funding may affect parental rights decisions by states’ judges and child protection agencies if they receive federal funds.

## PERSON & IDENTITY

*a project of the Catholic Women’s Forum at EPPC*

The mission of the Person and Identity Project (PIP) is to assist the Catholic Church in promoting the Catholic vision of the human person and responding to the challenges of gender ideology. Gender ideology has permeated the culture with stunning speed, influencing medicine, business, media, entertainment, government and education. Because it is sowing confusion and undermining the Church’s mission of evangelization, the rise of gender ideology has created an urgent need for clarity, education, and compassionate guidance for Catholic families and young people. The Person and Identity Project is committed to assisting the Church in meeting these needs. Learn more at **[personandidentity.com](http://personandidentity.com)**.

### Mary Hasson, JD

**Mary joins us on MCC from the Capitol this month as our latest guest to discuss the Equality Act and gender ideology.**

She is the Kate O’Beirne Fellow at the Ethics and Public Policy Center in Washington, D.C., where she also directs the Catholic Women’s Forum, a network of Catholic professional women and scholars seeking to amplify the voice of women in support of Catholic teachings. An attorney and policy expert, Mary advises legislators and faith-based organizations, including the USCCB Committee on Laity, Marriage, Family Life, and Youth, for whom she consults. Mary is the co-author of two books on education and editor of *Promise and Challenge: Catholic Women Reflect on Feminism, Complementarity, and the Church*. A graduate of the University of Notre Dame and Notre Dame Law School, Mary and her husband are the parents of seven adult children.



**In the latest episode of MCC from the Capitol**, MCC Executive Director Tyler McClay talks with Mary Hasson (see bio above) about the Equality Act and gender ideology. During this episode, Tyler and Mary discuss these very difficult issues from a Catholic perspective, providing an understanding and a way forward for the faithful who may know someone struggling with gender confusion. Mary also weighs in on the Equality Act, and the impact it would have on religious organizations and individuals if it were to pass. Listen to this and the other episodes of MCC from the Capitol on our website, Spotify, or Apple and Google Podcasts today. Scan the QR code to listen now!

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This information is sourced from the United States Conference of Catholic Bishops (USCCB). To read the full document, scan the QR code below.



## The Equality Act & Its Impact on Government Funding of Abortion

The Equality Act could have an adverse impact on existing provisions that prohibit the use of federal funds for abortion. Below we review relevant provisions of the bill. We then consider the potential consequences for current restrictions on federal funding of abortion.

### I. Text of the Equality Act

The following bill provisions are relevant:

1. Public accommodations. The Equality Act (H.R. 5) forbids discrimination based on “sex,” including “sexual orientation and gender identity,” in places of “public accommodation.” H.R. 5, § 3(a)(1). The bill defines “public accommodation” to include “any establishment that provides ... health care ... services.” Id. § 3(a)(4). The term “establishment” is not limited to physical facilities and places. Id. § 3(c). The term “sex” includes “pregnancy, childbirth, or a related medical condition.” Id. § 9(2).

The bill also states that “pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions.” Id.

2. Federally-funded programs and activities. The bill also forbids discrimination based on “sex,” including “sexual orientation and gender identity,” in any program or activity receiving federal financial assistance. Id. § 6. The term “sex” is again defined to include “pregnancy, childbirth, or a related medical condition,” and the listed items “shall not receive less favorable treatment than other physical conditions.” Id. § 9(2).

### II. Consequences for Federal Funding of Abortion

These changes in federal law could undercut existing prohibitions on the use of government funds for abortion.

For years it has been an accepted predicate in federal bill drafting that laws forbidding discrimination based on “sex” must have abortion-neutral language to blunt any inference that non-discrimination requires the provision or coverage of abortion. Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972, are illustrative. Both titles forbid discrimination based on sex, and both titles have abortion neutral amendments to mitigate or foreclose the claim that this prohibition requires a covered entity to provide or cover abortion. The fact that abortion-neutral language appears in Title VII and Title IX shows that Congress knows how to exclude abortion when it wants to. The failure to include an abortion-neutral amendment in the Equality Act therefore suggests a legislative intent to require the provision of abortion; otherwise, the Act, like Titles VII and IX, would have included such language. This conclusion is reinforced by (a) the bill’s definition of sex to include “pregnancy, childbirth, or a related medical condition,” (b) agency and judicial interpretations construing this language, and (c) the added qualification that pregnancy and “related medical condition[s] shall not receive less favorable treatment than any other physical conditions.”

The same reasoning—and the same conclusion—applies to the bill’s non-discrimination provisions as applicable to federally-funded programs and activities. Indeed, abortion advocates themselves are currently reading the federal funding provisions of the bill to permit women to successfully challenge the denial of abortion.

For more information relating to policy and Catholic teaching, visit [m catholic.org](https://m catholic.org).