

## Equality Act Advances to the Senate and to Controversy

By Karen D. Adinolfi

Last summer, the United States Supreme Court issued its decision in *Bostock v. Clayton County, Georgia*, which held that the protected classification of “sex” under Title VII included sexual orientation and gender identity. Under *Bostock*, LGBT employees and applicants are protected from discrimination on that basis.

However, *Bostock* did not address religious objections, although the majority opinion acknowledged that the issue was of concern and would need to be addressed in future opinions. As such, therein lies the controversy that the Equality Act, which would amend Title VII and other statutes to prohibit discrimination based on LGBT status in employment, public accommodations, and other areas, is certain to encounter in the Senate. In light of the razor-thin majority that proponents of the Equality Act have in the Senate, the lack of religious protections in the Equality Act may spell its doom. Senate Republicans have threatened a filibuster on the Act unless issues of religious objections are resolved.

Currently, about half of the states have no laws specifically banning discrimination on the basis of sexual orientation or gender identity. Indeed, 2021 has seen a slew of bills emerging from various state legislatures that seek to ban transgender women from participating in women’s sports. The political and cultural clashes that seem to accompany any legislation aimed at protecting the LGBT community from discrimination appear to have crystallized around the Equality Act.

An alternative bill, the Fairness for All Act, was introduced in December 2020, and while it banned LGBT discrimination, it included exceptions for religious institutions. Such appears to be a rebuke to the Equality Act, which contains provisions that purport to supersede the Religious Freedom Restoration Act, a 1993 law which prohibits the federal government from “substantially burdening” a person’s exercise of free religion unless the government demonstrates that doing so both furthers a compelling governmental interest and represents the least restrictive methods of doing so.

At this point, we will need to watch events surrounding the Equality Act unfold, which events will almost inevitably include some debate about and perhaps even concession to religious concerns. We will continue to keep you updated on this issue.

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