

It Took Seven Days To Create The World, And Nearly Fifty Years To Afford Antidiscrimination Protection For All

October 6, 2023
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...the arc of the moral universe is long, but it bends toward justice! [i]

Originally posted on 02/25/2021, content updated on 10/06/2023

On May 14, 1974, Bella Abzug, Representative for New York's 20th Congressional District, introduced into Congress the "Equality Act of 1974," the first piece of federal legislation to address discrimination based on sexual orientation. The act would amend Title VII of the Civil Rights Act of 1964 to prohibit discrimination against gays and lesbians in employment, housing, and public accommodations.

Ms. Abzug's Equality Act, as then presented, failed to pass and was thus relegated to the black hole of unsuccessful legislation and consigned to the annals of LGBTQIA history.

Nearly fifty years later, on February 18, 2021, Representative David Cicilline and Senator Jeff Merkley reintroduced the Equality Act,[ii] which afforded sweeping, clear, concise, and explicit anti-discrimination protections for all LGBTQIA people across key areas of life, including employment, housing, credit, education, public spaces and services, federally funded programs, and jury service.[iii]

The Equality Act[iii] will update existing federal nondiscrimination laws, including the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, the Jury Selection and Services Act, and several laws regarding employment with the federal government—to unambiguously incorporate sexual orientation and gender identity as protected characteristics. The legislation also explicitly amends the Civil Rights Act of 1964 to extend sex discrimination protections to public spaces and services, including retail stores, banks, legal services, and transportation services. These changes strengthen existing protections for everyone.[iv]

Questioning the need for passage of the Act, some have pointed to the June 2020, groundbreaking Supreme Court ruling in *Bostock v. Clayton County*[v], which made clear that employment discrimination on the basis of sexual orientation or gender identity violates Title VII, and have argued that the Supreme Court's decision can be stretched in its interpretation to protect LGBTQIA people from discrimination wherever federal law prohibits sex discrimination. The ruling in *Bostock* is too narrow though, for such a broad interpretation. The *Bostock* decision is based solely on the very particular facts and legal issues then present before the Court, and does little but scratch the surface in addressing discrimination against LGBTQIA people. The Equality Act however, in its present state, covers it all.

The Legislative Process

Care must be given however, before the celebration begins. The excitement of the re-introduction of the Equality Act has distracted many from the fact that its passage is not guaranteed.

Our legislative process, embodied in our Congress, provides ample opportunity for consideration and debate on every bill presented for passage into law. The open and full discussion provided under the Constitution can result in the notable improvement of a bill by amendment or the demise of a bill by assault and abatement.[vi]

Conclusion

The patchwork nature of current sex discrimination laws leaves millions of people subject to uncertainty and potential discrimination that impacts their safety, their families, and their day-to-day lives.^[viii] Absent the passage of the Equality Act as it is currently constructed, lesbian, gay, bisexual, transgender, queer, intersex and asexual, Americans will still lack basic legal protections in states across the country.

^[i] H.R.5 - Equality Act 116th Congress (2019-2020).

^[ii] House Expected To Vote On Sweeping LGBTQ Rights Bill Next Week, NBC News, 2/18/21.

^[iii] Originally introduced in 2019, the Equality Act passed the Democrat-controlled House in May 2019, but it stalled in the Republican-controlled Senate.

^[iv] HRC, *Take Action, Pass the Equality Act Now*, 2/17/21.

^[v] 590 U.S. ____ ; 140 S. Ct. 1731; 2020 WL 3146686; 2020 U.S. LEXIS 3252.

^[vi] Much like what happened to the Equality Act of 1974. See also, Congress.gov, *How Our Laws Are Made*.

^[vii] Time Magazine Why Federal Laws Don't Explicitly Ban Discrimination Against LGBT Americans, 3/19.

^[viii] Lambda Legal, *Lambda Legal Hails Introduction of the Equality Act*, 2/18/21.