



# THE EQUALITY ACT

## CENTRAL QUESTION



Should Congress amend the Civil Rights Act to include discrimination protections for sexual orientation and gender identity?

## INTRODUCTION



In February 2021, Representative David Cicilline, D-R.I., introduced the Equality Act of 2021. If passed by Congress and signed into law, it would expand the Civil Rights Act of 1964 to include federal protections against discrimination based on sexual orientation and gender identity in housing, employment, public accommodations, education, jury service, credit, and federal funding.<sup>1</sup> In this *Close Up in Class Controversial Issue in the News*, we will take a look at the current state of discrimination protections and challenge you to weigh the pros and cons of one of the paths forward.

## BACKGROUND



**What Is the Civil Rights Act of 1964?** In the aftermath of the Civil War, the United States ratified the 13th, 14th, and 15th Amendments to the Constitution. These amendments abolished slavery (13th), guaranteed citizenship to all people born or naturalized in the United States (14th), promised the “equal protection of the laws” to all citizens (14th), and protected the right to vote regardless of race (15th).<sup>2</sup> Yet racial discrimination continued in the following decades, as some states enforced racial segregation in public schools, public facilities, restaurants, hotels, and other businesses.

By the mid-1950s, this widespread discrimination had sparked the Civil Rights Movement, a nonviolent protest movement aimed at pressuring the government to protect the rights of minorities. The peaceful marches, sit-ins, boycotts, and Freedom Rides of the Civil Rights Movement gained nationwide attention and forced the government to take action. After a period of intense debate in Congress, President Lyndon B. Johnson signed the Civil Rights Act into law on July 2, 1964.<sup>3</sup>

So, what did this groundbreaking law do? It made it illegal to discriminate in employment, education, and public accommodations on the basis of race, color, national origin, sex, or religion.<sup>4</sup>

**A Movement for LGBTQ+ Rights.** Just as the Civil Rights Movement gained momentum in the 1950s and 1960s, the movement for lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ+) rights attracted nationwide attention in the 2000s and 2010s.



The Civil Rights Act does not specifically outlaw discrimination based on sexual orientation (a person's natural sexual attraction to others) or gender identity (a person's internal sense of gender). This has led states to take up the issue instead. As of 2021:

- Twenty-two states and the District of Columbia have laws that forbid discrimination based on sexual orientation and gender identity in employment and housing.
- Twenty-one states and the District of Columbia have laws that forbid discrimination based on sexual orientation and gender identity in public accommodations.
- Twenty-nine states do not have comprehensive LGBTQ+ non-discrimination protections.<sup>5</sup>

Although the Civil Rights Act does not specifically outlaw discrimination based on sexual orientation or gender identity, the federal government does have some anti-discrimination protections in place for LGBTQ+ citizens.

- In June 2015, the Supreme Court issued an historic opinion in *Obergefell v. Hodges*, ruling that the 14th Amendment guarantees all same-sex couples the right to marry.<sup>6</sup>
- In 2012 and 2015, the Equal Employment Opportunity Commission (EEOC) ruled that employment discrimination based on gender identity or sexual orientation qualifies as discrimination based on sex, and is therefore outlawed by the Civil Rights Act.<sup>7</sup>
- The Supreme Court affirmed this idea in 2020, ruling that the Civil Rights Act provides LGBTQ+ employees with protection because sex-based discrimination includes discrimination based on sexual orientation and gender identity. The case was brought by two employees who said they were fired for being gay and one who was fired for being transgender.<sup>8</sup>
- On his first day in office, President Joe Biden signed an executive order directing all government agencies to review their regulations, policies, and directives to better prevent discrimination based on sexual orientation and gender identity.<sup>9</sup>

## THE CURRENT CONTROVERSY



### Should Congress amend the Civil Rights Act to include discrimination protections for sexual orientation and gender identity?

In February 2021, Representative Cicilline introduced the Equality Act which, if passed by Congress and signed into law, would expand the Civil Rights Act to include federal protections against discrimination based on sexual orientation and gender identity in housing, employment, public accommodations, education, jury service, credit, and federal funding.<sup>10</sup>

So, why is the Equality Act controversial? And what does it have to do with religious freedom? In 1993, President Bill Clinton signed the bipartisan Religious Freedom Restoration Act (RFRA), which states that the government shall not "substantially burden religious exercise without compelling justification."<sup>11</sup> Opponents of the Equality Act argue that it would violate the RFRA by forcing business owners whose religions do not support LGBTQ+ identification to provide services that do—or else be accused of discrimination. But supporters of the Equality Act argue that religious freedom rights should not outweigh basic civil rights.

This conflict arose in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018), when the Supreme Court ruled in favor of a baker who cited his religious beliefs and First Amendment rights in refusing to make a wedding cake for a gay couple. But the Court's decision had a narrow scope, applying solely to the case in question and not addressing the underlying questions of constitutionality that would apply to all cases like it in the future.<sup>12</sup>





## SHOULD CONGRESS AMEND THE CIVIL RIGHTS ACT TO INCLUDE DISCRIMINATION PROTECTIONS FOR SEXUAL ORIENTATION AND GENDER IDENTITY?



**YES: The Equality Act is necessary to ensure equality for LGBTQ+ people, and the government has a responsibility to protect all citizens from discrimination.**

On June 26, 2015, the Supreme Court made history when it ruled that the Constitution guarantees LGBTQ+ people the right to marry.<sup>13</sup> Yet the United States is far from true equality. As of 2021, 29 states still lack comprehensive LGBTQ+ non-discrimination laws.<sup>14</sup> It is time for the LGBTQ+ community to receive the government protections that all Americans deserve.

Discrimination against LGBTQ+ Americans is a widespread problem. In fact, one in three respondents in a 2020 poll of LGBTQ+ Americans reported that they had personally experienced discrimination in the past year, including three out of five transgender respondents.<sup>15</sup>

The federal government has more work to do to protect LGBTQ+ rights, and passing the Equality Act is a necessary step. "It is just wrong that in a majority of states, LGBTQ Americans live without fully inclusive non-discrimination laws and can still face discrimination simply because of who they are or who they love," said Senator Tammy Baldwin, D-Wis. "It is time to end this kind of discrimination because LGBTQ Americans should have the freedom of full equality."<sup>16</sup>

For years, Americans allowed racial discrimination, which was often based on attitudes steeped in religious beliefs. This was unjust and antithetical to American values. Religious freedom cannot trump human rights or provide justification for discrimination against the LGBTQ+ community.

The Equality Act is popular. A March 2020 poll conducted by the Human Rights Campaign and Hart Research Associates found that seven in ten voters support the legislation, "spanning across demographic and partisan groups, including across all ages, races, religions, and political parties."<sup>17</sup> That included 50 percent of Republicans and white evangelical Christians. And according to the same poll, 57 percent of respondents believed (incorrectly) that LGBTQ+ Americans are fully or partially protected under federal law.<sup>18</sup>

If the United States is serious about guaranteeing equality for all, Americans must enact uniform policies for LGBTQ+ people across the entire country. A patchwork of protections, where some states do and some states do not address LGBTQ+ discrimination, is wholly inadequate. The few protections currently on the books need to be codified into federal law to ensure they are far-reaching and long-lasting.



**NO: The Equality Act is redundant considering the current LGBTQ+ protections that exist, and the government has a responsibility to uphold religious freedom.**

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."<sup>19</sup> In the first words of the First Amendment, the framers of the Constitution outlined one of the nation's most important founding principles: the freedom of religion. These words guarantee that the government cannot interfere in free belief—yet this would be cast aside if the Equality Act becomes law.

Each of the states that have passed their own versions of LGBTQ+ protections offer some form of religious exemption. Yet the Equality Act would void RFRA exemptions entirely.<sup>20</sup> Americans can agree that all people should be treated fairly and with dignity, but that treatment should also apply to people and institutions with deeply held religious convictions.

Business owners who hold such beliefs could be compelled to provide services for customers that violate those beliefs. For example, in order to avoid a discrimination lawsuit, a photographer could be required to photograph an LGBTQ+ wedding, or a baker could be forced to provide a cake. "When you're asking someone who provides professional services to do something, or be punished by law, that violates their faith, you're violating that religious liberty that they have," said Senator Marco Rubio, R-Fla.<sup>21</sup>

"[Sexual orientation and gender identity] laws threaten the freedom of citizens ... to affirm their religious or moral convictions," wrote Ryan Anderson, a fellow at the Heritage Foundation. "Disagreement with someone's actions is not enough to justify the government's coercing him into conformity with prevailing opinion."<sup>22</sup>

Furthermore, the Equality Act is unnecessary. The 14th Amendment already ensures equal protection of the laws. And the Supreme Court has ruled that employment discrimination based on sexual orientation or gender identity is outlawed by the Civil Rights Act.

When the Civil Rights Act was enacted in 1964, Black Americans were experiencing blatant, systemic discrimination and segregation at the hands of elected officials and law enforcement officers. LGBTQ+ people are in no way subject to the same circumstances today. Although the Equality Act has noble intentions, it would protect the freedom of certain Americans while stepping on the freedom of others.

## QUESTIONS TO CONSIDER



**1. What is the Civil Rights Act of 1964? Why is it important?**

**2. Do you support passage of the Equality Act? Explain your answer.**

**3. What do you find to be the most compelling argument on the other side of the debate? Explain your answer.**





- <sup>1</sup> Congress.gov. "H.R. 5 – Equality Act." Web. 14 Jun. 2021.
- <sup>2</sup> U.S. Constitution. Amendment XIII. U.S. Constitution. Amendment XIV. U.S. Constitution. Amendment XV.
- <sup>3</sup> National Park Service. "Civil Rights Act of 1964." Web. 16 Jan. 2017.
- <sup>4</sup> Legal Information Institute. "Civil Rights Act of 1964." Cornell Law School. Web. 16 Jan. 2017.
- <sup>5</sup> Warbelow, Sarah, Courtney Avant, and Colin Kutney. *2020 State Equality Index*. Human Rights Campaign. 2020. Web. 14 Jun. 2021.
- <sup>6</sup> Oyez. "*Obergefell v. Hodges*." Web. 8 Aug. 2015.
- <sup>7</sup> U.S. Equal Employment Opportunity Commission. "Facts About Discrimination in Federal Government Employment Based on Marital Status, Political Affiliation, Status as a Parent, Sexual Orientation, or Transgender (Gender Identity) Status." Web. 16 Jan. 2017.
- <sup>8</sup> Totenberg, Nina. "Supreme Court Delivers Major Victory to LGBTQ Employees." NPR. 15 Jun. 2020. Web. 13 Apr. 2021.
- <sup>9</sup> WhiteHouse.gov. "Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation." 20 Jan. 2021. Web. 13 Apr. 2021.
- <sup>10</sup> Congress.gov. "H.R. 5 – Equality Act." Web. 14 Jun. 2021.
- <sup>11</sup> Bomboy, Scott. "What Is RFRA and Why Do We Care?" National Constitution Center. 30 Jun. 2014. Web. 28 Jul. 2015.
- <sup>12</sup> Oyez. "*Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*." Web. 14 Jun. 2021.
- <sup>13</sup> Liptak, Adam. "Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide." *New York Times*. 26 Jun. 2015. Web. 8 Aug. 2015.
- <sup>14</sup> Warbelow, Sarah, Courtney Avant, and Colin Kutney. *2020 State Equality Index*. Human Rights Campaign. 2020. Web. 14 Jun. 2021.
- <sup>15</sup> Gruberg, Sharita, Lindsay Mahowald, and John Halpin. "The State of the LGBTQ Community in 2020: A National Public Opinion Study." Center for American Progress. 6 Oct. 2020. Web. 13 Apr. 2021.
- <sup>16</sup> Baldwin, Tammy. "U.S. Senator Tammy Baldwin Statement on House Passage of Equality Act." Official Website of Senator Tammy Baldwin. 25 Feb. 2021. Web. 14 Apr. 2021.
- <sup>17</sup> Ronan, Wyatt. "New Poll: 7 In 10 Voters Support the Equality Act." Human Rights Campaign. 17 Mar. 2021. Web. 13 Apr. 2021.
- <sup>18</sup> Ibid.
- <sup>19</sup> U.S. Constitution. Amendment I.
- <sup>20</sup> Boorstein, Michelle, and Samantha Schmidt. "Equality Act is Creating a Historic Face-Off Between Religious Exemptions and LGBTQ Rights." *Washington Post*. 16 Mar. 2021. Web. 14 Apr. 2021.
- <sup>21</sup> Barabak, Mark. "Prospective White House Candidates Tussle Over Indiana Religious Law." *Los Angeles Times*. 31 Mar. 2015. Web. 16 Jan. 2017.
- <sup>22</sup> Anderson, Ryan. "How So-Called 'Equality Act' Threatens Religious Freedom." The Daily Signal. 23 Jul. 2015. Web. 8 Aug. 2015.

