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A high-minded threat to personal liberty

By: Tony Perkins - Thursday, November 7, 2013

The U.S. Senate has now passed the so-called Employment Non-Discrimination Act by a vote of 64 to 32. The act would create special federal categories in employment law for “sexual orientation” and “gender identity.”

While advocates of the Employment Non-Discrimination Act routinely present it as an expansion of “civil rights,” it actually represents a major threat to liberty. Even Walter Olson of the libertarian Cato Institute, who actually supports redefining marriage, opposes the bill as a threat to freedom of association. Fortunately, House Speaker John A. Boehner has reiterated his opposition to the bill, meaning that it is unlikely to be taken up by the Republican-controlled House of Representatives.

Even so, the Employment Non-Discrimination Act is sure to resurface in the future, so it’s important to understand the inherent problems in the proposed legislation. The act undermines the ability of employers to make decisions they feel are appropriate in their hiring practices. In fact, the vast majority of employers would not consider an employee’s sexual orientation relevant or even want to know about an employee’s sex life. However, the bill would transform the workplace into an environment in which certain lifestyles would be given a special status by the federal government. Moreover, it threatens to undermine religious expression as well.

The Employment Non-Discrimination Act contains a very narrow “religious exemption,” but previous experience with similar laws and similar “exemptions” at the state and local level give little confidence that they will fully protect conscience when the law is applied. Sometimes, the enforcers will seek to limit the exemption to actual clergy but insist that church employees who do not proclaim the faith are not exempt. Some will exempt all employees of actual churches, but leave nonprofits and parachurch ministries unprotected. Sometimes, religious nonprofits are protected, but not if a significant part of their work is “secular” in nature (such as feeding the poor or educating children). In any case, any exemption is unlikely to apply to any profit-making entity — even a religious publishing house or radio station.

Unfortunately, the mere language of a legislative “exemption” is inadequate to predict how liberal activists on the Equal Employment Opportunity Commission or in the courts will interpret it.

Regrettably, even a more robust religious-freedom exemption for businesses will not solve the problems of discrimination against religious employers and fellow employees. Such an exemption would force businesses to certify or otherwise state their religious beliefs when they previously were reluctant to do so. There should be no religious litmus test for businesses.

Even more alarming than the lack of a strong religious exemption, however, is the prospect that the Employment Non-Discrimination Act would lead to a form of reverse discrimination, whereby anyone who expresses or promotes a view of family or morality that can be interpreted to be a disapproval of homosexual conduct or disagreement with elements of the homosexual political agenda (such as the redefinition of marriage) will be subject to retaliation and discrimination.

We have already seen numerous examples of this even in the absence of the act. In September, college football commentator Craig James was fired by Fox Sports Southwest after only one appearance on air, reportedly because of comments critical of homosexuality and of redefining marriage — not comments made on air, but while he was running for a Texas Senate seat a year-and-a-half earlier. “He couldn’t say those things here,” a company spokesman declared bluntly. He didn’t, and had no intention of doing so. Simply because he made the comments — in a completely different forum and context — he lost his job.

Crystal Dixon was fired as an administrator at the University of Toledo in 2008 because of an opinion article she wrote — again, entirely separate from her work — that questioned whether sexual orientation should be compared with race with respect to “civil rights” (Ms. Dixon is black).

Last year, Angela McCaskill was suspended from her job as an administrator at Gallaudet University. She had said nothing at all about homosexuality, but merely exercised her First Amendment right to “petition the government” — in this case, to allow voters in Maryland to have a say regarding the redefinition of marriage.

In 2005, a federal court upheld the city of Oakland’s refusal to allow a group of Christian employees to advertise their “Good News Employee Association,” because their poster expressed “respect for the natural family, marriage and family values.”

Homosexual and transgender activists have long since moved beyond “tolerance” as a goal of their movement. Instead, they seek to force the federal government to create a world in which no one, ever, anywhere, expresses the slightest reservations about whether homosexual conduct or sex changes are either physically or morally healthy. The Employment Non-Discrimination Act is a key step toward fulfilling this extreme vision and undermining true tolerance.