

December 12, 2017

Dr. Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Mr. Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington DC 20515

Dear Chairwoman Foxx and Ranking Member Scott:

The undersigned civil rights, faith, religious freedom, LGBTQ, and reproductive rights organizations write to express strong opposition to Sections 115, 117, 495(c), 496(7), and any other provision of H.R. 4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform Act, that would allow the use of religion to discriminate. We support amendments to strike these provisions.

Religious freedom is a fundamental right, protected by our Constitution and federal law. It guarantees us all the right to believe (or not) as we see fit. But it doesn't give anyone the right to use religion as an excuse to discriminate or harm others. These provisions would violate this core principle.

These provisions are designed to permit religious student groups and religiously affiliated colleges to disregard the rules, including bars on discrimination, all other schools and groups must follow. These broad, unwarranted, and unfair exemptions from laws and policies would result in taxpayer-funded discrimination.

Section 115: Sanctions Discrimination by Religious Student Groups

Colleges and universities often have nondiscrimination policies that require officially recognized student groups to allow any student to join, participate in, and seek leadership in those groups. These policies ensure that all students have an equal opportunity to participate in student groups at public colleges and universities and that the schools do not subsidize discrimination with tax dollars and tuition fees. In a 2010 case, *Christian Legal Society v. Martinez*,¹ the Supreme Court upheld one of these policies against claims that it violated the constitutional rights of a Christian student club.

Section 115 would create a special exemption just for religious clubs that would allow them to ignore such nondiscrimination rules and policies. As a result, it would force state schools to sanction and subsidize discrimination.

Section 117: Creates FADA-like Provision for Religiously Affiliated Colleges and Universities

This section bars federal, state, or local government from taking "adverse action" against colleges and universities if doing so would have the effect of "prohibiting or penalizing" the institution for actions that are "in furtherance of its religious mission." This sweeping provision is modeled after the highly controversial First Amendment Defense Act (FADA), and in many ways is broader and more harmful.

¹ 561 U.S. 661 (2010).

Under this provision, colleges and universities could claim a right to ignore laws and policies that conflict with their religious beliefs. It threatens to undermine nondiscrimination protections at the federal, state, and local level and could harm LGBTQ people and women the most. These institutions could claim a right to discriminate against a woman who uses birth control or who is pregnant and unmarried, a man who marries his same-sex partner, or someone who gets divorced, just to name a few examples.

The right to believe is fundamental; the right to discriminate—especially with taxpayer dollars—is not.

Section 495(c): Codifies An Exemption from State Licensing and Authorizing Laws for Religiously Affiliated Colleges and Universities

In order to be an eligible institution under the Higher Education Act, a college or university must be legally authorized by a state to offer post-secondary education. This section, however, permits religious institutions to escape that requirement: it declares them eligible to serve as an institution of higher learning if they are “exempt from any provision of State law” that requires these institutions to be authorized as a “religious institution.” The effect is to permit them to operate as a college or university solely because they are religious institutions.

496(7): Interferes with Accreditation Process

Current law requires accrediting agencies to “respect the stated mission of the institution of higher education, including religious missions.” In 2008, report language stated unambiguously that this provision “does not change or alter current accreditation requirements . . . for the enforcement of nondiscrimination provisions.”²

This section of the bill, however, would create a sweeping exemption that would allow religious institutions to skirt accreditation requirements, including nondiscrimination provisions. The provision would bar an accrediting agency from applying a standard if the religiously affiliated college “determines that the standard induces, pressures, or coerces the institution to act contrary to, or to refrain from acting in support of, any aspect of its religious mission.” Thus, if the religiously affiliated college says an accreditation requirement—including nondiscrimination requirements for admissions, housing, employment, or student retention—interferes with what it says is its religious mission, it can still maintain its accreditation.

* * *

We support amendments to strike all of these harmful provisions that are intended to create far-reaching religious exemptions. These provisions would result in discrimination and harm, and thus raise serious constitutional concerns.

Sincerely,

Advocates for Youth
American Association of University Women (AAUW)
American Atheists
American Civil Liberties Union
Americans for Democratic Action (ADA)
Americans United for Separation of Church and State
Anti-Defamation League

² H.R. Rep. No. 110-500, at 273-74 (2007).

Catholics for Choice
Center For Inquiry
CenterLink: The Community of LGBT Centers
Clearinghouse on Women's Issues
DignityUSA
Equality California
Feminist Majority Foundation
GLSEN
Human Rights Campaign
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Lambda Legal
The Leadership Conference on Civil and Human Rights
Los Angeles LGBT Center
Mazzoni Center
Medical Students for Choice
NARAL Pro-Choice America
National Abortion Federation
National Asian Pacific American Women's Forum (NAPAWF)
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Education Association (NEA)
National Institute for Reproductive Health (NIRH)
National Latina Institute for Reproductive Health
National LGBTQ Task Force Action Fund
National Organization for Women
National Partnership for Women & Families
National Women's Law Center
NEAT - the National Equality Action Team
New School for Social Research
New Ways Ministry
Outserve - SLDN
People For the American Way
Planned Parenthood Federation of America
Pride at Work
Religious Institute
Reproductive Health Access Project
Secular Coalition for America
Secular Policy Institute
Secular Student Alliance
URGE: Unite for Reproductive & Gender Equity
Women's Alliance for Theology, Ethics, and Ritual (WATER)