Submitted by Mr. McKeon

November 6, 2007

United States House of Representatives
Washington, D.C. 20510

Dear Representative,

On behalf of Family Research Council and the thousands of families we represent, I write to express our opposition to The Employment Non-Discrimination Act (ENDA), H.R. 3685, introduced by Representative Barney Frank (D-MA) and to be voted on today. We also oppose amendment #1 by Representative Tammy Baldwin (D-CA) which seeks to include transgendered people and a limited religious protection amendment (#7) to be offered by Representative George Miller (D-CA).

H.R. 3685 seeks to provide employment protections similar to those of the Civil Rights Act of 1964, but is specifically directed to gay, lesbian and bisexual employees. This definition creates an unnecessary protected class and is a threat to religious liberties of small businesses and religious organizations. An immediate concern is that ENDA violates employers' and employees' constitutional freedoms of religion, speech and association. Additionally new language in the bill directly seeks to undermine the institution of marriage and the numerous marriage protection laws and amendment in the states. Representative Baldwin's amendment would extend those same unconstitutional extra protections to those who claim to be transgendered.

FRC plans on scoring the Employment Non-Discrimination Act (ENDA) in our annual Scorecard to be released this fall. We also reserve the right to score Representative Baldwin's amendment and Representative Miller's (D-CA) incomplete religious liberty amendment. His amendment is a blatant attempt to deceive Members into thinking that ENDA protects religious liberty when, in fact, it facilitates the bill's undermining of religious organizations and institutions.

Sincerely,

Tom McClusky
Vice President of Government Relations

FAMILY RESEARCH COUNCIL
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Council for Christian Colleges & Universities

Submitted by Mr. McKeon

30th CCCU Anniversary

Celebrating 30 years of advancing the cause of Christ-centered higher education for nearly 180 institutions in more than 20 countries.

Paul R. Corts, Ph.D.
President

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Washington, DC
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October 1, 2007

The Honorable George Miller, Chairman
House Education and Labor Committee
U. S. House of Representatives
Washington, DC

Dear Chairman Miller:

I write to alert you to my concern about a bill that has been introduced in the U.S. House titled "To prohibit employment discrimination on the basis of sexual orientation or gender identity," and referred to as the Employment Non-Discrimination Act of 2007 or ENDA (HR 3685). Appropriately, the Act provides a religious exemption consistent with the Civil Rights Act as Amended in 1972. However, the categorical religious exemption is undermined in Section 3(a)(8) of the Act by a problematic and unacceptable definition of religious organization that casts doubt on whether many of our member campuses – all intentionally Christian colleges – would be exempt. As I understand the definition language, educational institutions that are themselves religious but that are not controlled by some other religious organization, such as a church or a denomination, are not extended the religious exemption.

Our institutions are fully accredited institutions that provide studies in all the general fields of knowledge. Our campuses teach from a Christian worldview and a biblical perspective as they deal with the specific disciplines of study, operating from an understanding that all truth is God's truth. To be true to our mission as Christian institutions, we require that all of our members have a governing board adopted policy that the institution hires only faculty and administrators who profess personal faith in Jesus Christ.

Since 1972 when the Civil Rights Act was amended to forthrightly protect the mission-critical hiring rights of religious organizations, including religious higher education, our institutions have been able to grow and expand our service to our communities with a robust religious mission and distinctive approach because we have had the ability to select all of our staff on a religious, mission-critical basis. Our continued existence as distinctively religious institutions, and with it, a diverse and thriving higher education sector, is threatened because the proposed ENDA, with its limiting and non-categorical religious exemption, does not clearly and fully ensure our religious, mission-critical staffing freedom.

I urge you to remove the complicated religious definition language currently in ENDA and ensure that the Act categorically exempts religious organizations as in Section 702(a) of Title VII of the Civil Rights Act of 1964, as amended.

Thank you for your consideration.

Sincerely,

Paul R. Corts, President

Submitted by Mr. Kline

American Association of Christian Schools

Educating for Eternity

October 1, 2007

The Honorable George Miller
Education and Labor Committee
U.S. House of Representatives
2205 Rayburn House Office Bldg
Washington, D.C. 20515

The Honorable Buck McKeon
Education and Labor Committee
U.S. House of Representatives
2351 Rayburn House Office Bldg
Washington, D.C. 20515

cc: Members of the U.S. House Education and Labor Committee

Re: Language of Religious Exemption Clause to H.R. 3685

Dear Chairman Miller and Ranking Member McKeon and Committee Members:

The American Association of Christian Schools writes to highlight the problems with the revised language of section 6 of the Employment Non-Discrimination Act of 2007 (ENDA). AACS has already written in opposition to the bill to express our concern about the deleterious effect this legislation would have on the ability of religious Americans to follow the dictates of their respective faiths while still in accordance with the law.

We appreciate the efforts made by the subcommittee members to accommodate the requests of outside groups to offer clearer protections in the bill for religious organizations and schools. The revised section 6 reads: "This Act shall not apply to any religious organization." Unfortunately, the definition of a religious organization does not adequately cover religious schools that are not "controlled, managed, owned, or supported by a particular religion, religious corporation, association, or society."

The bill does exempt institutions in which the curriculum is "directed toward the propagation of a particular religion." AACS sees practical and philosophical problems with this portion of the definition. From a practical standpoint, our schools that are not directly associated with a church are at risk; specifically, it is not clear that our preparatory schools associated with religious liberal arts colleges would be covered under this exemption. The language of the exemption leaves a substantial loophole for litigants to bring suits against religious schools regarding employment practices.

The courts have a history of preferring the educational aspect of religious schools to the indoctrination component. In *Baltimore Lutheran High School Assn. v. Employment Security Admin.*, 490 A.2d 701 (Md. 1985), an unemployment case, the Maryland Court of Special Appeals ruled against the school contending that the school was not "operated primarily for religious purposes." The school conducted mandatory chapel services and attempted to integrate a distinctly Christian worldview into all of its courses.

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Section 3(a)(8)(ii) would invite the courts to examine the beliefs and practices of religious schools to determine the degree of religiousness. Philosophically, this aspect of the bill is deeply troubling because it infringes on the ability of religious schools to exercise their religious beliefs free from government intrusion. In the case of *EEOC v. Kamehameha,* 990 F.2d 458 (9th Cir. 1993) the court ruled against a nominally Protestant Hawaiian school on the grounds that the school was not sufficiently sectarian to warrant its refusal to hire a Catholic applicant.

The ambiguity of the language places religious organizations in the same uneasy waters as the original language did and still presents no meaningful protection for religious organizations such as religious schools.

Sincerely,

Dr. Keith Wiebe
President, American Association of Christian Schools

HR 3685 Submitted by Mr. McKeon

American Association of Christian Colleges & Seminaries, Inc.

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October 4, 2007

The Honorable George Miller
Education and Labor Committee
U.S. House of Representatives
2205 Rayburn House Office Bldg
Washington, D.C. 20515

The Honorable Buck McKeon
Education and Labor Committee
U.S. House of Representatives
2351 Rayburn House Office Bldg
Washington, D.C. 20515

Cc: Members of the U.S. House Education and Labor Committee

Re: Revised Language of Religious Exemption Clause to H.R. 3685

Dear Chairman Miller and Ranking Member McKeon and Committee Members:

The American Association of Christian Colleges and Seminaries writes to highlight the problems with the revised language of section 6 of the Employment Non-Discrimination Act of 2007 (ENDA). We are writing to express opposition to the bill and to state our concern about the serious negative effect this legislation would have on the ability of religious Americans to follow the dictates of their respective faiths while still in accordance with the law.

We appreciate the efforts made by the subcommittee members to accommodate the requests of outside groups to offer clearer protections in the bill for religious organizations and schools. The revised section 6 reads: "This Act shall not apply to any religious organization." Unfortunately, the definition of a religious organization does not adequately cover religious schools that are not "controlled, managed, owned, or supported by a particular religion, religious corporation, association, or society."

The bill does exempt institutions in which the curriculum is "directed toward the propagation of a particular religion." The American Association of Christian Colleges and Seminaries sees practical and philosophical problems with this portion of the definition. From a practical standpoint, our schools that are not directly associated with a church are at risk. First, it is not clear that our

preparatory schools associated with religious liberal arts colleges would be covered under this exemption. Second, it appears there may be inadequate protections for our Christian liberal arts universities which are not denominationally aligned. The language of the exemption leaves a substantial loophole for litigants to bring suits against religious schools regarding employment practices.

The courts have a history of preferring the educational aspect of religious schools to the indoctrination component. In *Baltimore Lutheran High School Assn. v. Employment Security Admin.*, 490 A.2d 701 (Md. 1985), an unemployment case, the Maryland Court of Special Appeals ruled against the school contending that the school was not "operated primarily for religious purposes." The school conducted mandatory chapel services and attempted to integrate a distinctly Christian worldview into all of its courses.

Section 3(a)(8)(ii) would invite the courts to examine the beliefs and practices of religious schools to determine the degree of religiousness. Philosophically, this aspect of the bill is deeply troubling because it infringes on the ability of religious schools to exercise their religious beliefs free from government intrusion. In the case of *EEOC v. Kamehameha,* 990 F.2d 458 (9th Cir. 1993) the court ruled against a nominally Protestant Hawaiian school on the grounds that the school was not sufficiently sectarian to warrant its refusal to hire a Catholic applicant.

The ambiguity of the language places religious organizations in the same uneasy waters as the original language did and still presents no meaningful protection for religious organizations such as religious schools.

Sincerely,

Richard Stratton

Richard Stratton, Ph.D.
President

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Submitted by
Mr. McKeon

Traditional Values COALITION Legislative Alert

ENDA Still Protects Gender Identity

ENDA (the H.R. 3685 version) is scheduled to be marked up in House Education and Labor Committee Thursday, October 18. On behalf of Traditional Values Coalition's over 43,000 supporting churches and millions of members, we urge a NO vote on H.R. 3685 or any other version of ENDA.

The H.R. 3685 version of ENDA is threat to religious liberty, and is a litigation nightmare:

- **Individuals with gender identity disorders still would receive protection under ENDA even though language explicitly including gender identity as a protected class has been removed from the proposed legislation**.

- ENDA poses a serious threat to businesses. Even though H.R. 3685 has removed "gender identity", it will still be a litigation nightmare or any employer who has 15 or more employees. Anyone with a bizarre sexual orientation can claim protection under this legislation. (See the attached 30 orientations). The workplace is not just an employee's cubicle. Workplaces are public facilities frequented by children-restaurants, stores, theaters, theme parks, hospitals/Dr office etc.

- H.R. 3685 includes the terms "actual or perceived" in it. The term "perceived" provides homosexuals and transgenders far broader protection than for African-Americans, Hispanics, women, or people of faith under Title VII of the Civil Rights Act of 1964. Equating cross-dressers or she-males to legitimate minority groups is a slap in the face to all who fought in the Civil Rights Movement.

- In addition, the word "perceived" can be used by transgenders to claim protection under ENDA. This word also covers 30 different kinds of "sexual orientations" in ENDA. Any person who is a heterosexual, bisexual, or homosexual under ENDA, can also engage in a variety of sexual orientations and bizarre behaviors listed in the American Psychiatric Association's Diagnostic and Statistical Manual Of Mental Disorders (DSM).

- ENDA will force Christian schools, universities, publishing companies, day care centers, independent nursing homes, advocacy groups, etc., not directly connected to a denomination to kowtow to the demands of homosexual and transgender employees.

Oppose any version of ENDA

Traditional Values Coalition is an inter-denominational public policy organization comprising over 43,000 member churches. For more information, call (202) 547-8570. TVC 139 C Street SE, Washington, DC 20003 Web site address: www.traditionalvalues.org

Submitted by Mr. McKeon

בס"ד

Agudath Israel of America
אגודת ישראל באמריקה

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Rabbi Abba Cohen
Director and Counsel

October 16, 2007

The Honorable George Miller, Chairman
The Honorable Howard P. McKeon, Ranking Member
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Re: ***ENDA***

Dear Chairman Miller and Ranking Member McKeon:

I write on behalf of Agudath Israel of America, a national Orthodox Jewish organization, to express our perspective on the "Exemption for Religious Organizations" contained in Section 6 of H.R. 3685, the Employment Non-Discrimination Act of 2007. The full Committee is expected to soon mark up the proposal.

As a religious organization, Agudath Israel is especially sensitive to issues relating to the free exercise of religion on both the individual and the institutional levels. Such issues arise from time to time in the context of anti-discrimination legislation, where we remain vigilant to ensure that laws promoting the civil rights of some do not come at the expense of the religious rights of others. For this reason, we are pleased that the Committee has responded to certain concerns that we, and other religious organizations, expressed in regard to an earlier version of the bill and has taken steps to broaden the religious exemption language.

Unfortunately, however, Section 6 still fails to provide a full measure of protection for religiously-related institutions and activities. Specifically, as detailed below, Section 6 provides no protection for (1) charitable organizations controlled by religious entities, or (2) commercial enterprises that involve religious activities and employ religious functionaries. Furthermore, (3) nothing in Section 6 protects religious organizations that claim its exemption from being subject to various forms of legal disability for their refusal to comply with the general provisions of ENDA. These glaring deficiencies – apart from other concerns we have with the legislation – are reasons enough for us to oppose the bill.

1. **Religiously-Controlled Charities** – Recognizing that many faith groups adhere to beliefs that might bring them in conflict with what they would see as religiously-objectionable legal requirements in ENDA, the bill rightfully provides certain religious entities an exemption. Under Section 3(a)(8)(A), the exemption provided for

in Section 6 applies to all religious corporations, associations, or societies. There is no question that these organizations should be covered under the bill's exemption and we salute the drafters for expanding the earlier version of this exemption.

We also commend the addition of Section 3(a)(8)(B)(i), under which the rights of educational institutions are safeguarded if "the institution is in whole or substantial part controlled, managed, owned, or supported by a particular religion, religious corporation, association or society" – *i.e.*, even if the institution is not itself a religious entity. But educational institutions are not the only entities that need protection when they are controlled by religious corporations. We strongly believe that religiously-controlled *charities* deserve similar deference.

While many religious entities provide direct charitable services to their communities, others often opt to cater to the needs of the needy through separate charitable corporations. These corporate spin-offs, though under the control of religious entities, are not "religious" in any legal sense; they do not, for example, involve any type of ritual, worship or teaching. But these charities have taken the lead in helping to address some of society's most pressing needs -- health care, employment, housing, education, hunger, poverty, crime and drugs. They have partnered with government and with others in the private sector, and they have met with enormous success.

Nonetheless, these subsidiaries are cognizant of, and animated by, their religious roots and, in practical terms, are operated by, and broadly recognized as, offshoots of their parent bodies. While, from the outside, this work is purely "social service" in nature, it is motivated by a strong religious conviction, and it is this sense of religious mission that accounts in large measure for the dedication of its workers and the achievement of its goals. Indeed, the secular activities become part and parcel of the religious character and calling of the corporate parent. This could well be lost should such an organization -- whose work does not fit the unreasonable confines of the proposal's exemption -- be forced to adopt employment policies that run contrary to the mission of its sponsoring faith organization or community. Such organizations, no less than religiously–controlled schools, deserve protection.

2. **Religiously-Related Activities and Occupations** – There are other difficulties in exempting only religious corporations from the scope of the bill. The problem is manifest in cases involving commercial entities that are deeply involved in activities that are religious in nature. For example, a store that sells ritual items and religious books undoubtedly was opened, and is run, as a business. But successfully fulfilling its *raison d'etre* is often contingent upon its ability to assist the community in the performance of rituals and in learning the fundamental tenets of their faith – and it will frequently employ someone for precisely that religious purpose. In so doing, it performs a vital religious function and should not be deprived of protection.

Another problem involves cases where the entity is nonsectarian, but particular positions on staff are plainly religious in nature. Many hospitals, nursing homes, community centers and the like are secular non-denominational institutions that employ chaplains or other pastoral counselors to provide an array of religiously-oriented services. Sometimes the vast majority of the entity's constituency may be comprised of members of a particular faith. The effectiveness of these religious workers is directly linked to how comfortably those under their care can relate to them. Yet, no protection is offered here.

We can continue with other examples but the point is clear. In the Jewish community, and surely in other faith communities as well, there are numerous religious functionaries who are employed by secular – both for profit and not for profit -- concerns. These positions could surely have legitimate occupational qualifications that limit the scope of eligible applicants. And, it is noteworthy that Title VII of the Civil Rights Act of 1964 [42 U.S.C. §2000e-2(e)(1)] recognizes that certain classifications – i.e. religion, sex, national origin – may be deemed a "bona fide occupational qualification" and preferences on that basis do not constitute unlawful employment practices. No such protection is provided, however, in the ENDA legislation. This is unacceptable.

3. **Religious Exemptions** – We conclude with an important point. Section 6 provides an exemption for religious organizations. The Committee clearly acknowledges that the free exercise of religion may very legitimately make it impossible for a religious entity to conform to the requirements of this bill. And if a religious organization feels it must avail itself of the exemption, it has every right to do so.

But then what? Are such organizations truly protected? The sad reality is that, for all intents and purposes, often they are not.

We have seen this phenomenon recently take place in the disheartening experiences of the Boy Scouts of America. The Supreme Court spoke clearly when it ruled in the *Dale* case that the Scouts were constitutionally protected in adhering to their traditional, morally-based membership policies. But since that time, there have been numerous instances of governmental retaliation against the organization. In Madison, Wisconsin, the City Council voted to exclude Boy Scouts from the proceeds of its annual July 4th collection. In Norwalk, Connecticut, the group had to fight for permission to hold a meeting in the public park after being told by several member of the Parks Committee that a permit would not be granted. In Philadelphia, Pennsylvania, the City threatened to cut off the Scouts' use of city-owned property.

This has also led to much litigation, on both state and federal levels, involving taxpayer challenges to the Boy Scouts' relationship with government entities, as well as suits where the government itself has terminated or changed the terms of a relationship with the organization. (Of course, the Boy Scouts are not the only traditionalists under

attack. Christian recruiters, student groups, and clubs have been excluded or denied recognition and access in several state educational institutions.)

It is, indeed, praiseworthy that Congress recognized the unjust treatment leveled against the Boy Scouts – who simply asserted their constitutional rights – and passed such legislation as the "Boy Scouts of America Equal Access Act" and the "Support our Scouts Act." These bills were intended to alleviate governmental discrimination against the group, and declared loudly that treatment of the Scouts as "pariahs" will not be tolerated. [For further discussion on the experience of the Boy Scouts, *see* Scott H. Christensen, *The Constitutional Rights of Boy Scouts*, 7 Engage: The Journal of the Federalist Society's Practice Groups, Oct. 2006, at 105.]

In passing civil rights legislation of this type, without simultaneously providing similar protection for those that claim the Section 6 exemption, Congress is creating the potential that they will be treated like Boy Scouts-type pariahs. Religious groups can surely avail themselves of the Section 6 exemption, but that in no way guarantees that they will not pay a steep price.

The Committee must ask itself, not only whether this exemption covers the groups and activities that deserve coverage, but also whether governmental or legal retaliation for those who utilize it, is within the intent and spirit of the protection. If not, we believe it behooves Congress to follow its own lead and provide religious groups protection against unjust treatment.

Religious freedom – the First Freedom – must be given a full measure of protection, even as Congress expands rights in other areas. Unfortunately, the exemption contained in H.R. 3685 fails to adequately safeguard the free exercise of religion in regard to a range of groups and activities. We oppose the bill.

Thank you for considering our views.

Sincerely yours,

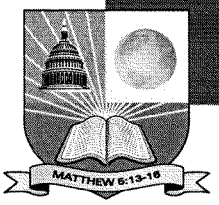
Rabbi Abba Cohen

RAC/mc

cc: The Honorable Barney Frank
House Leadership
House Committee on Education and Labor

Submitted by Mr. McKeon

THE ETHICS & RELIGIOUS LIBERTY COMMISSION
OF THE SOUTHERN BAPTIST CONVENTION



October 16, 2007

The Honorable George Miller
Chairman, Education and Labor Committee
United States House of Representatives
2205 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Howard "Buck" McKeon
Ranking Member, Education and Labor Committee
United States House of Representatives
2351 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Miller and Ranking Member McKeon:

We write to express our strong opposition to H.R. 3685, the Employment Non-Discrimination Act of 2007 (ENDA). While we appreciate the attempt to make ENDA more palatable by removing protections for transgenders and broadening the exemption for religious organizations, we believe this bill still poses serious threats to religious institutions and businesses.

In accordance with our belief in the constitutional principle of equal protection, we do not believe it is appropriate to provide special employment protections for people based on their sexual orientation beyond what has been traditionally provided and is legally protected under Title VII. "Sexual orientation" does not rise to the level of immutable characteristics deserving special protections, like race, age, and gender.

While the new version includes a broadened exemption for religious organizations, many schools, universities, day cares, shelters, and job training services with religious missions would not be covered. ENDA ultimately would undermine what these schools and services believe to be their God-given mission by forcing them to cater to homosexuals.

The effect on many educational institutions is very troublesome. Section 3(a)(8) exempts a school or university as a religious organization if it is "in whole or substantial part controlled, managed, owned, or supported by a particular religion, religious corporation, association, or society," or "the curriculum of the institution is directed toward the propagation of a particular religion." Many independent religious schools, however, would not be covered by this exemption. Consequently, litigants would use this loophole to bring suits against the schools, and courts could then compel them to hire

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faithandfamily.com

homosexuals, whose lifestyles would violate the school's core principles. Further, the government could unnecessarily lead schools to alter their lesson plans as courts are left to determine what constitutes curriculum "directed toward the propagation of a particular religion."

Equally troublesome is the effect on the business community. The business community at large would be forced to demonstrate special protections for homosexuals, creating a hostile work environment and opening employers to a litany of lawsuits. Merely keeping a Bible on a desk or a Scripture verse on a wall in an office, for example, could be viewed as discrimination based on "actual or perceived sexual orientation." As countless employers would inevitably be brought to court, no one knows how different judges would interpret the word "perceived." No doubt, the unintended consequences that might follow for employers and employees could be significant.

In spite of the sponsors' efforts to create an acceptable bill, H.R. 3685 would violate the constitutional principle of equal protection and create inappropriate government intrusion on businesses and the religious community, forcing many employers with moral objections to homosexuality to violate their freedom of conscience in employment decisions. The constitutional freedoms of religion and conscience should be afforded to not only religious organizations addressed in Section 3(a)(8) but to all religious institutions and all businesses.

We urge the committee to take our concerns under consideration and reject H.R. 3685 or any other similar legislation that expands protections based on sexual orientation.

Sincerely,

Richard D. Land