

Analysis of the Necessity and Feasibility of the Equality Act

Yimeng Wang

Ocean University of China, Qingdao, Shandong, 266100, China
yimengwang2001@163.com

ABSTRACT

Passage of the Equality Act gets closer, but controversy continues over its implementation. This paper gives a brief introduction of the Equality Act, demonstrates the necessity of the bill from the current situation of the LGBTQ community, the difference in states' legislation and the corporation with the Equal Rights Amendment. Later, it analyzes the feasibility of the impacts on women's sports, religious freedom, and internal injustice. This paper finds that the necessity of the Equality Act is based on the vulnerability of the LGBTQ community's status, the difference in states' legislation, and the corporation with the Equal Rights Amendment. Besides, this paper finds the Equality Act feasible on the basis of women's sports, religious freedom, and internal injustice.

Keywords: *Equality Act, Gender identity, Sexual orientation, Religious*

1. INTRODUCTION

On February 25, 2021, the U.S. House of Representatives voted 224–206 to pass the Equality Act, which would amend the Civil Rights Act of 1964 to protect citizens from discrimination on the basis of sexual orientation and gender identity in employment, housing, and other services, and in access to public accommodations such as restaurants. It is not the first time that the Equality Act has been passed by the House of Representatives. The U.S. House of Representatives passed the Equality Act in 2019, but the denial of the Senate prevented it from becoming a law. Whether the Equality Act will be passed this time in the Senate is still an uncertain question. Public opinions from the opponents and proponents of the Equality Act create verbal clashes of intensity. Some materials focus on its conflict with religious freedom. Some people draw attention to the increasing trend of discrimination based on gender identity and sexual orientation. Several take notice of the influence of the Equality Act in the fields of women's sports, toilet choice and so on. Most of the papers expand the conflicts, for instance, between the Equality Act and women's sports, and raise serious doubts and concerns about the implementation of this bill. This paper will not step aside from these potential conflicts, but will confront these problems from the perspective of proponents.

Based on the existing discussions about the merits and drawbacks of the Equality Act, this article will analyze the necessity of the Equality Act based on the current situation of the LGBTQ community, the difference in state legislation and its corporation with the Equal Rights Amendment. Meanwhile, it will discuss the feasibility of the Equality Act, focusing on sports, religion and internal injustice. Eventually, it brings up some suggestions for the Equality Act in order to make this act embrace all of the members of society.

2. INTRODUCTION OF THE EQUALITY ACT

Fifty years ago, the Stonewall Riots lifted the curtain on the modern LGBTQ-right movement [1]. From 1969 to 2022, gender identity and sexual orientation have grown in importance and importance in society. As the understanding of the LGBTQ community has progressed, there is greater acceptance, which has led to increased inclusion of gender identity as well as sexual orientation as characteristics that should be protected under law. [2] Despite the fact that many people respect and understand the LGBTQ community, there is still a large number of people who oppose different gender identities beyond biology and sexual orientation, with the exception of heterosexuality, which contributes to thousands of discrimination incidents, whether intentional or unintentional.

In February 2021, Representative David Cicilline of Rhode Island introduced the Equality Act in the U.S. House of Representatives. This Act will amend the Civil Rights Act of 1964 to prohibit discrimination on the basis of sex, sexual orientation, and gender identity in employment, housing, public accommodations, education, federally funded programs, credit, and jury service. This Act is built to expand, as well as clarify, confirm, and create greater consistency in the protections and remedies against discrimination on the basis of all covered characteristics and to provide guidance and notice to individuals, organizations, corporations, and agencies regarding their obligations under the law. [3]

Before the Equality Act of 2021, the Equality Act was proposed three times by Representative Cicilline. [4] The first two times, the act was denied in committee when the House of Representatives was under the control of the Republican Party. The third version passed in the House of Representatives in 2019 after the Democratic Party took control. Unfortunately, it still could not become a law because of the denial in the Senate that was controlled by the Republican Party.

Before the Equality Act of 2021, a vital case came out of the blue and left a strong mark on judicial history--- *Bostock v. Clayton County*. *Bostock* involves three different employment discrimination claims brought by long-time employees. Their respective employers terminated Gerald Bostock and Donald Zarda soon after they revealed they were homosexuals [5]. The employer of Aimee Stephens, who had lived as a man for the first six years of her employment, was fired when she revealed that she would start to live as a woman. These three individuals brought employment discrimination claims against their former employers, contending that they were victims of sex discrimination. [6] The U.S. Supreme Court decided in *Bostock* that discrimination based on sexual orientation is a form of sex discrimination.[7] This case is an incredible step forward, no matter for the LGBTQ community or for the U.S. judicial branch, which also paves the way for the Equality Act of 2021.

Though the Equality Act of 2021 was passed by the House of Representatives, it still leaves uncertainty and variation in the Senate. Before the final decision is made, the Equality Act needs to take more factors into consideration and improve its acceptability throughout society.

3. THE NECESSITY OF EQUALITY ACT

The necessity of passing equality is one of the strong claims of its proponents. A law exists and is enacted because people need it to regulate unfairness, bad phenomena, and harmful behaviors that hurt others, no matter how mental or physical they are. The Equality Act was born from the fact that the LGBTQ community is being exposed more to the public. More exposure to the

LGBTQ community means that there must be three parties that hold a supportive, opposed, or neutral attitude towards the LGBTQ community. The influence of these attitudes reflects on daily life and contributes to the different treatment in different states.

3.1. The LGBTQ community's current situation

LGBTQ is an abbreviation of Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning people. In the past, people recognized that sex and race are characteristics that are so intrinsic that they are essentially unchangeable. As understanding of the LGBTQ community has progressed, there's greater acceptance that a person's identity as LGBTQ is also intrinsic and immutable, which has in turn led to increased inclusion of sexual orientation and gender identity as characteristics that should be protected under law.[2] However, not all people accept and understand the LGBTQ community.

Not only do people of the LGBTQ community suffer unfair treatment in school, employment, housing, and other areas, but they are also hurt by the maliciousness that causes the stress. According to a 2013 Pew Research Center survey, 21% of LGBT Americans reported being treated unfairly by an employer in hiring, pay, or promotions. [8] Discrimination affects the transgender community even more acutely. [1] According to the 2015 National Center for Transgender Equality survey of over 27,000 transgender people, 30% of respondents who had a job reported being fired, denied a promotion, or experiencing some other form of mistreatment in the workplace due to their gender identity in 2014.[9] The unemployment rate for transgender people was three times the national average.[9] The rate of home ownership was only 16%, compared to 63% in the overall national population. [9]. The discrimination of people from the LGBTQ community has become a sobering problem in society, which indeed creates inconvenience, unfairness, and deep harm.

Furthermore, this severe discrimination has a negative impact on the mental health of LGBTQ people. From the 2015 National Center for Transgender Equality survey, 39% reported experiencing serious psychological distress in the month before the survey--eight times the proportion of the overall population--and 40% had attempted suicide in their lifetime--nearly nine times the attempted suicide rate in the overall population. This unhealthy mental state causes extreme stress for this group of people, which obviously makes them feel their presence is inappropriate, unwelcome, and even out of place. This kind of exclusion of a group of people will create some unstable factors and grievances in society, which should be concerned and regulated by the Equality Act in order to protect the LGBTQ community from being alienated and excluded.

3.2. Difference in legislation

All forty-five states plus the District of Columbia prohibit discrimination in places of public accommodation, with all such laws banning discrimination on the basis of race. The scope of these laws can vary considerably from state to state, but the principle is nearly universal: state laws banning discrimination are necessary complements to federal law in order to ensure that individuals are able to access the fundamental building blocks of our society.[2] Despite this, state law plays an important role in anti-discrimination. as mentioned above, "the principle is nearly universality", states' acceptance of the LGBTQ community varies significantly.

The obvious difference between state laws can be seen in a map from the Human Rights Campaign, which shows whether a state addresses discrimination against students based on gender identity and sexual orientation. Two states, including New Mexico and Wisconsin, prohibit discrimination based on sexual orientation. Eighteen states and Washington, DC are against discrimination based on sexual orientation as well as gender identity. Except in these states, prohibitions against discrimination based on gender identity and sexual orientation are missing in almost twenty-nine states. [10] The blank in legislation is just a part of the problem.

Some states even enact laws to limit the LGBTQ community's participation in school or work. South Dakota's Republican Gov. Kristi Noem signed a bill that would ban trans youth from participating in school sports with students of their same gender identity.[11] In Florida, the state legislature is debating what's being called the "Don't Say Gay" bill, which would bar teachers from discussing LGBTQ people. [11] These laws are gradually forming a "basin" of protection for the LGBTQ community, which may cause severer problems and resistance in the future.

Compared to the blank and "basin" in state legislation, the protection in law is still insufficient. This insufficiency requires all the states that hold to the principle of equality to take action through legislation in order to create substantial protection for the LGBTQ community. Therefore, there is no better choice than the Equality Act to help in forming the universal principle.

3.3. Corporations with the Equal Rights Amendment

The Equal Rights Amendment is a proposed amendment to the United States Constitution that is designed to guarantee equal legal rights for all American citizens, regardless of sex. Its purpose is to end the legal

distinctions between men and women in employment, divorce, and other matters. The Equality Act will amend the civil rights laws in order to expand the existing civil rights protection for people nationwide. As a constitutional protection, the ERA would insulate sex equality protections from the whims of Congress and changing political climates and solidify the foundations of existing equality provisions in our laws as well as proposed laws such as the Equality Act. [12]

As two different types of laws, the Equality Act and the Equal Rights Act interact corporately in the protection of sex discrimination. They are mutually reinforcing pillars of equality.[12] The Equal Rights Amendment as a constitutional law provides a solid legal foundation for the Equality Act. The Equality Act as a bill in the U.S. Congress also could help to improve the progress of the states' ratification of the Equal Rights Amendment. Therefore, the passing of the Equality Act will be a strong left arm assisting the Equal Rights Amendment, which is the right arm to fight together against discrimination.

4. FEASIBILITY - THE PROBLEMS BEHIND THE EQUALITY ACT

Whether a law is feasible depends on its anticipated practice. As for most of the opponents of the Equality Act, people cast doubts on the feasibility of this act and point out several unpractical concerns. The most prevailing concerns are about women's sports and religious freedom, and a group of people pay attention to the problem of internal injustice.

4.1. Fairness in Women's Sports

Lindsay is a college student at Boise State University. She is willing to participate in the track team in order to make friends with other girls. However, a new law in Idaho would ban her from doing so because she is transgender.[13]

The situation of transgenders in sports is caused by an enacted bill. On December 10, 2020, before the case of Lindsay, Idaho Governor Brad Little signed a law that imposes an outright ban on transgender participation in women's sports.[14] Some people argue that the Equality Act will improperly open the gates of women's sports to men, who are physically stronger and have some advantages in sports. Therefore, the Equality Act will undermine the fairness in sports and benefit transgenders who are original men.

With the breakthrough of Bostock, some professional associations that govern female intercollegiate athletics have transgender women are not eligible to compete in female sports until they have received at least one year of treatment to suppress testosterone levels, and there is evidence that their participation does not pose unfair competition to biological women. [15] Furthermore, the

involvement of transgender athletes will offer more opportunities for people to succeed in sports. It takes out more admission tickets than before and stimulates people with various gender identities and sexual orientations to take part in sports. At least for now, the implementation of the Equality Act does not appear to be a threat to fairness in women's sports.

4.2. Religious Freedom

Another debate about the feasibility of the Equality Act is about its conflict with religious freedom. There is an inevitable paradox that those who are "free" to practice their religious beliefs may violate the equal rights of the LGBTQ community; if the equal rights of the LGBTQ community are respected, they may violate their own religious beliefs. [16] Nevertheless, this paradox will be solved by the implementation of the Equality Act. With respect to LGBTQ people, churches, synagogues, and mosques could be forced to violate their sincerely held religious beliefs. [17] Will the Equality Act deny the right to religious freedom?

It is not an either-or question. There is a line between discriminating against someone based on their status and who they are and not participating in a ceremony or event because it violates religious beliefs. [18] Discrimination cannot be wrapped up with religious freedom. Religion cannot be used as an excuse to hurt someone because of their gender identity or sexual orientation. The Equality Act does not intend to limit religion, but to expand protection. The conflict between the Equality Act and religious freedom is not the conflict between protection and discrimination. The latter conflict can be solved by laws, while the former conflict can be resolved by respect. Times are constantly changing, population growth is accompanied by increased diversity, and the problems associated with social diversity will increase. It is embracing differences and accepting diversity that can better solve the problems of the time.

4.3. Internal Injustice

This is a novel concern about the feasibility of the Equality Act. People debate whether the Equality Act could protect the minority group substantially, such as on a college campus where the bullets and discrimination are happening quietly in the corner of the classroom. Internal injustices are difficult to regulate by law and can only be avoided through individual or collective self-awareness or through self-imposed rules and regulations.

Not merely on campus, the other kind of internal injustice mentioned is that some people may take advantage of legal "loopholes" to threaten others and seek excessive requirements or monetary benefits, which in turn may violate the legal rights of others. [19] It is detrimental to achieving the purpose of the Equality Act and for the LGBTQ community to gain true respect.

Though it is not happening, after the enactment of the Equality Act, it will challenge the protection to a great extent.

5. DISCUSSION AND SUGGESTIONS

From the analysis of the Equality Act's necessity, it becomes a necessary bill for the LGBTQ community so that its passing and implementation is almost a foregone conclusion. Nevertheless, the feasibility still raises some inevitable questions that may cause the bill to hit a wall in the implementation process. Therefore, in order to make the Equality Act more feasible and workable, some revision and adjustment should be made in the final version of the bill.

As mentioned above, transgender athletes' impact on women's sports does not undermine the fairness of the sports for now. However, it is not an unchanging situation. The Equality Act should prevent people with an ulterior motive from taking advantage of transgender rights for a sporting victory. Adding a relevant section to avoid it is of great importance. Meanwhile, the Act should balance the broadness and concreteness to benefit the court in terms of interpreting the law in later cases.

As for Internal injustice, the Equality Act as a law that regulates the whole country may not be effective in such a grey area. The states must take the responsibility to make policies or organize officials to confront the problem directly.

6. CONCLUSION

This paper mainly focuses on the necessity and feasibility of the Equality Act. As for the necessity, the current status of the LGBTQ community, the difference in states' legislation, as well as the need for corporations to comply with the Equal Rights Amendment, decide that this bill is of great necessity. In terms of the feasibility, though there are concerns about women's sports, religious freedom, and internal injustice, this act is still feasible in reality. Some difficult aspects of the feasibility must be addressed by the legislative and executive branches, regardless of whether they are at the federal or state level. All in all, the diversity of the people and gradual acceptance suggest that the future of the Equality Act is overall promising and worth further research. At the same time, the challenges and questions need attention.

REFERENCES

- [1] Federal Information and News Dispatch, Inc. House Judiciary Committee Hearing; H.R.5, the "Equality Act," to prohibit discrimination on the basis of sex, gender identity, and sexual orientation.; Testimony by Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law; WAX40140219HA59[N]. 2019.?

- [2] Sarah Warbelow and Cathryn Oakley. The Virginia Values Act: A Landmark Civil Rights Legalization Leapfrogs Virginia into a Leader on Equality[M?]. 24 Rich. Pub. Int. L. Rev. 29
- [3] Equality Act of 2021, H.R. 5, 117th Cong. § 1 (2021).
- [4] Victoria D. Manuel. The Future of LGBTQ+ Equality After Obergefell and Bostock[M]. 49 Rutgers L. Rec. 60.
- [5] Allison R. Donahue. Nessel had support from her past opponent[EB]. Newstex Blogs, 2022.
- [6] Brown K D , Waughray A D , Khandare L , et al. Bostock v Clayton County Game Changer: US Federal Employment Law Now Covers Caste Discrimination Based on Untouchability[J]. SSRN Electronic Journal, 2021.
- [7] Bostock v. Clayton Cty., 140 S. Ct. 1731, 1738 (2020).
- [8] Brad Sears, Christy Mallory, Documented Evidence of Employment Discrimination and its Effects on LGBT People [EB]. 2011, <http://williamsinstitute.law.ucla.edu/wpcontent/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.
- [9] Sandy E., James et. al, Nat'l Ctr. For Transgender Equality, The Reporter of the 2015 U.S. Transgender Survey[R]. 2016, <https://www.transequality.org/sites/default/files/docs/USTS-Full-ReportFINAL.PDF>.
- [10] Human Rights Campaign. The Reality Flag[EB/OL] . [https://www.hrc.org/campaigns/equality-act\(2022,1,19\)](https://www.hrc.org/campaigns/equality-act(2022,1,19))
- [11] Nikki Schwab. Biden tells transgender Americans 'I will always have your back' so you can 'be yourself and reach your Godgiven potential': Tells Congress to finally get the Equality Act to his desk. <https://advance-lexis-com.ezproxy1.library.arizona.edu/api/document?collection=news&id=urn:contentItem:64WY-9Y91-DY4H-K0XT-00000-00&context=1516831>.
- [12] ERA Project. The Equal Rights Amendment and the Equality Act: Two Equality Measures Explained[N]. 2021, <https://advance-lexis-com.ezproxy1.library.arizona.edu/api/document?collection=news&id=urn:contentItem:63SJ-W621-JCMN-Y0H6-00000-00&context=1516831>.
- [13] Hecox v. Little, 479 F. Supp. 3d 930 (2020)
- [14] Jacquelyn Gillen. Comment: Striking the Balance of Fairness and Inclusion: The Future of Women's Sports After the Supreme Court's Landmark Decision in Bostock v. Clayton County, GA[M?]. 2021.
- [15] Yaqing Ding. October issue of LGBT Law Tabloid[EB]. 2020
- [16] Yeliang Zhang. The new conundrum of "religious freedom" in America[J]. The world intellectual, 2015(11):70-72.
- [17] Self-Educated American. Equality Act Guts Religious Freedom[N]. 2021.
- [18] Allison R. Donahue. Nessel Asks Supreme Court to Expand Protection for LGBTQ[EB]. Newstex Blogs, 2022.
- [19] Chen Dai. Passes Draft Equality Act, LGBT Community Issues Draw Heated Debate[J]. Study Aboard, 2021(05): 54-57.