



1640 Rhode Island Ave., N.W.
Washington, D.C. 20036
web: www.hrc.org
phone: 202/628-4160
fax: 202/347-5323

HUMAN
RIGHTS
CAMPAIGN®

REBUTTALS TO FREQUENTLY USED ARGUMENTS AGAINST THE EMPLOYMENT NON-DISCRIMINATION ACT

H.R. 3017

FALSE STATEMENT: A federal law is unnecessary and unwise because corporate America, states and municipalities are passing their own LGBT non-discrimination policies and laws.

REBUTTALS:

- A minority of states currently protect their LGBT citizens from baseless discrimination. It is still legal to fire someone for being lesbian, gay or bisexual in 30 states and for being transgender in 38 states. A federal law is necessary to ensure uniformly fair employment protections for all LGBT workers.
- Though many Fortune 500 companies extend non-discrimination policies to their LGBT workers, the vast majority of Americans do not, in fact, work for these companies. Ensuring fair treatment and justice for all workers is not something we should ‘outsource’ to the private sector – equality is a public concern.
- To be fired from a job for being who you are is one of the most egregious forms of workplace discrimination. As people of faith it is incumbent upon us to demand justice when a clear wrong exists. LGBT people should not have to choose where they live based on whether they risk being fired for who they are. We cannot wait for some states to pass their own, differing, versions of ENDA when LGBT people in other states go without protection. It is moral necessity for the federal government to intervene against baseless employment discrimination and now is the time to act

FALSE STATEMENT: Religious organizations theologically opposed to homosexuality and transgender expressions will have to compromise their beliefs and hire LGBT people.

REBUTTALS:

- ENDA contains a broad and explicit exemption for religious organizations. This exemption covers the same religious groups that are exempt from Title VII’s prohibition on employment discrimination based on religion.
- Though we oppose discrimination in all its forms, as ardent supporters of First Amendment rights, we recognize the importance of the religious exemption in ENDA. As religious leaders and your constituents, we encourage you pass a fully inclusive version of ENDA.

FALSE STATEMENT: This legislation would create thousands more lawsuits and hurt small businesses across the country.

REBUTTALS:

- Experience with state employment non-discrimination laws has shown this argument to be false. According to a November 2008 study conducted by the Williams Institute at the UCLA Law School, there has simply been no notable increase in litigation in states that have enacted LGBT non-discrimination laws. In fact, the rate of sexual orientation discrimination claims, as compared to the population of lesbian, gay and bisexual people, is similar to the number of claims, as compared to population, based on gender and race.
- The Employment Non-Discrimination Act (H.R. 3017) does not apply to businesses with fewer than 15 employees; this framing is consistent with our nation's current workplace non-discrimination laws as they apply to religious affiliation, race, ethnicity, gender and disability.
- ENDA does not permit "disparate impact suits," claims that a facially neutral practice of an employer has a disproportionately adverse effect on persons of a particular protected group.

FALSE STATEMENT: This law gives LGBT employees "special" protections not made available to others.

REBUTTALS:

- The right to work is not a "special" privilege – access to an earned income is a basic human right that should be afforded to all people willing and able to work.
- We already have civil rights laws protecting against many forms of discrimination including race, religion, gender, disability, and national origin. ENDA doesn't give "special" rights, but instead puts LGBT Americans on the same footing as everyone else.
- This legislation does not prevent employers from firing lazy and incompetent employees. It simply gives all Americans a fair chance at working hard to achieve their desired career goals without the stumbling blocks of discrimination or bias.

POSSIBLE STATEMENT: We support an ENDA that extends protections for LGB employees, but my district will not support this bill if businesses have to accommodate fair employment practices for transgender workers. We do not support a fully inclusive bill.

REBUTTALS:

- Gender identity is essential to this bill. Transgender people are often the first to be fired and the last to be hired. As people of faith it is incumbent upon us to stand in solidarity with those most harmed by the lack of basic workplace protections. Preserving this bill's gender identity inclusive language is fundamentally a moral issue.
- ENDA's gender identity inclusive language in fact protects all employees regardless of their gender or gender expression. Even heterosexual employees who may not conform to traditional gender norms will be protected from unwarranted workplace discrimination.