



# The Equality Act: What It Means for the Jewish Community

*This extended version includes information on the Equality act that does not specifically affect Jewish organizations in Indiana*

## **WHAT IS THE EQUALITY ACT**

### **What is the Equality Act?**

If passed by the U.S. Congress, the Equality Act would update the federal Civil Rights Act of 1964 to prohibit discrimination based on sexual orientation and gender identity in employment, housing, public accommodations, public education, federal funding, credit, and the jury system. Passage of the Equality Act would provide LGBTQ+ people nationwide with protection against discrimination.

### **Why has the Equality Act not passed?**

In 2019, the bill passed the U.S. House of Representatives in a bipartisan 236-173 vote. In the Senate, it never moved out of Committee. Now, under new leadership in the Senate, it has a greater chance of passing. President Biden has pledged to sign the Equality Act into law if Congress passes it.

### **What is a “Public Accommodation”?**

A public accommodation is a place that is open to the public and offers goods and services such as a restaurant, stadium, hotel, or library. Federal and state laws protect designated groups from discrimination in places of public accommodation, based on the premise that all are entitled to enjoy the goods and services offered on an equal basis. There are two types of entities classified as public accommodations: government-owned and operated entities and privately-owned and operated businesses and services.

### **What does not qualify as a Public Accommodation?**

Churches, synagogues, mosques, and other religious organizations are generally not considered public accommodations. However, when these facilities rent to the public for non-religious purposes, they become public accommodations during that period of use. Besides these exceptions, the law interprets most public accommodations to include most businesses that are open to the public, especially in the context of enforcing anti-discrimination laws.

### **How does the Equality Act expand protections under Public Accommodations?**

"Public accommodations" is a category that the bill will broaden to include online retailers, transportation providers, and other areas not currently protected due to the development of modern technologies that have emerged since the signing of the original Civil Rights Act in 1964. The Equality Act would expand existing discrimination classes — like racial or religious discrimination — to these types of businesses and retailers.

### **How does the Equality Act Affect the federal Religious Freedom Restoration Act (RFRA)?**

The Equality Act would set limits on the Religious Freedom Restoration Act so an entity could not use RFRA to challenge the act's provisions, nor could it use RFRA as a defense to a claim made under the act.

### **What does limiting RFRA mean?**

The Equality Act would limit RFRA from being used to discriminate against people based on sexual orientation and gender identity in employment, housing, public accommodations, public education, federal funding, credit, and the jury system. These areas of protection currently exist under the Civil Rights Act.



# The Equality Act: What It Means for the Jewish Community

*This extended version includes information on the Equality act that does not specifically affect Jewish organizations in Indiana*

## **IMPLICATIONS FOR THE JEWISH COMMUNITY –FAQ**

### **Does the Equality Act undermine religious freedom?**

No. Religious freedom is a fundamental American value and protecting religious minorities from discrimination is entirely compatible with protecting LGBTQ+ people from discrimination. The Equality Act furthers the principle of religious freedom by expanding and enhancing nondiscrimination protections for people of all faiths. Because the Equality Act amends existing federal civil rights laws, the same religious exemptions that have been in place for decades will continue to apply. Protection for LGBTQ+ people will be held to the same standard as other forms of discrimination — no more and no less.

### **Are there religious exemptions?**

Yes. Under the Equality Act, longstanding religious exemptions in federal civil rights employment law or housing law for religious entities are maintained. This means that religious organizations, such as churches, mosques, and synagogues, can continue to prefer people of their faith in hiring.

### **What about stores and service providers that sell religious goods and services like Christian bookstores or Jewish funeral homes?**

The Equality Act will not mandate that any retailer sell any product or offer any particular service type. It merely requires that all customers be treated equally and can purchase the same products or services on the same terms as others.

### **Would religious schools lose government funding if they don't admit LGBTQ+ students?**

The Equality Act does not add religion to Title VI of the Civil Rights Act of 1964, which prohibits discrimination by federal funds recipients. A religious school that limits enrollment and employment to members of their identified faith may continue to receive federal funds, such as school lunch subsidies. Religious schools may determine their faith's tenets and decline to enroll or hire individuals who are not members of their faith in good standing. However, once a school decides that enrollment is open to the public and includes students of all faiths or no faith, it cannot deny entry to LGBTQ+ students and maintain its federal funding.

### **What about a house of worship that rents out its facilities for weddings? Would it have to let couples rent those facilities for weddings it believes violates its religious principles?**

Under the Equality Act, houses of worship will remain free to determine which religious ceremonies they will celebrate within their faith traditions. If a religious organization rents out space to the general public for wedding ceremonies outside its faith tradition, it would be considered a public accommodation and subject to nondiscrimination laws.

**Will the Equality Act require religious organizations to hire people who don't live consistent with their faith traditions? What about board members of religious nonprofits?** The Equality Act does not change the existing exemptions in Title VII of the Civil Rights Act, allowing religious organizations to prefer individuals of the same faith in hiring. That means these organizations can continue to hire people exclusively of the same religion or prefer applicants. But they cannot otherwise discriminate. That means if a religiously affiliated hospital employs people of all faiths for secular positions, they can't fire a nurse or janitor for having a same-sex spouse or for transitioning. A religious school that only employs members of the same faith could continue to do so. Unpaid leadership positions like boards of directors are not considered "employees" subject to the employment discrimination laws.



# The Equality Act: What It Means for the Jewish Community

*This extended version includes information on the Equality act that does not specifically affect Jewish organizations in Indiana*

## IMPLICATIONS FOR THE JEWISH COMMUNITY –FAQ Extended

### **Will the Equality Act bar mental health care providers from providing reparative therapy? What if it's done in a pastoral setting, without compensation?**

- The Equality Act prohibits discrimination by businesses that serve the public or programs that take federal funds. It does not apply to pastoral counseling or other services that a religious organization offers to members of its congregation.

### **Are there Religious Exemptions**

- **Yes**, under the Equality Act, the longstanding religious exemptions contained in federal civil rights employment law or housing law for religious entities are maintained. **This means that religious organizations, such as churches, mosques and synagogues, can continue to have a preference for people of their faith in hiring.**
- Employees will continue to be able to seek religious accommodations in the workplace, such as seeking time off to attend High Holiday religious service or wear a religious head covering. People will also be able to select roommates or rent rooms in their home in a way that is consistent with their religious beliefs, as they can now under federal civil rights laws.

### **Would the Equality Act require private religious colleges or universities to admit LGBTQ students or others who don't live consistently with their faith?**

- The Equality Act **does not add religion to Title VI of the Civil Rights Act of 1964** which prohibits discrimination by recipients of federal funds. A religious school may limit enrollment to members of the faith. Religious schools may determine the tenets of their faith and decline to enroll individuals who are not members of the faith in good standing.

### **Why doesn't the Equality Act address discrimination based on religion in federally funded programs?**

- Freedom of religion in the context of federally funded programs is already protected by the U.S. Constitution in most cases. The Equality Act preserves the ability of religious organizations that take federal funding to prefer coreligionists in hiring, housing, and in other respects to the same extent as current law.

### **Will individual health care providers need to provide care they object to, such as fertility services for LGBTQ people or transition related care?**

- This law would not require any institution or provider to perform any specific procedure, or prohibit them from exercising medical judgment. The Equality Act prohibits discrimination against individuals, and ensures that medical care is not withheld on the basis of a patient's sex, including their sexual orientation or gender identity.
- Health care institutions that choose to or are required by other laws to provide accommodations for individual employees must ensure patients don't face denials or delays on a discriminatory basis.

### **Will religious hospitals have to provide transition-related care?**

- The Equality Act **does not require any hospital to perform any specific procedure, or prohibit its providers from exercising medical judgment.** The Equality Act prohibits discrimination against individuals and ensures that medical care is not withheld from specific groups of people for non-medical reasons.



# The Equality Act: What It Means for the Jewish Community

*This extended version includes information on the Equality act that does not specifically affect Jewish organizations in Indiana*

**Will the Equality Act mean that social services charities have to shut down or compromise their faith? Won't the Equality Act discriminate against religious organizations that won't compromise their principles by denying them access to federal funding available to others and allowing them to be sued?**

- The Equality Act requires all agencies that take taxpayer dollars or that serve the general public to follow the same rules and not discriminate. It does not single out any beliefs or treat religious organizations differently. If a religious social services agency wants to serve only members of their faith, they can continue to do so, but not with taxpayer dollars.

**Will religious institutions be forced to recognize marriages that are inconsistent with their faith?**

- **Religious institutions are not required to marry any couple inconsistent with their faith nor to recognize those marriages for religious purposes.** Religious institutions that open their doors to the public will need to respect the marriages of same-sex couples for purposes of medical decision making, emergency shelter, and government benefits (just as Catholic hospitals presently recognize subsequent marriages of previously divorced people, for example, despite the fact that the Catholic Church will not solemnize those marriages either).

**What about small businesses like Masterpiece Cakeshop? Didn't the Supreme Court say they have a right to refuse service?**

- **No.** *Masterpiece Cakeshop* held only that all people are entitled to have their positions respectfully considered when there are legal disputes and that, because there was evidence that the state agency that had ruled against the bakery and its owner evidenced hostility against religion in their decision-making, the finding of violation of state law made in that case had to be overturned. Importantly, the **Supreme Court's opinion reaffirmed long-standing precedent that businesses open to the general public have no free exercise right to violate public accommodation laws.**

**Will the Equality Act change the scope of public accommodations law put religious funeral homes or cemeteries out of business?**

- No. If a funeral home or cemetery is affiliated with a house of worship and offers religious services to members of the faith, it is not a public accommodation because it does not offer services to the general public. Moreover, public accommodations laws do not require any business to change the services they offer.

**Would the Equality Act require employers and businesses to ensure that their employees do not use a transgender person's birth name or the pronoun consistent with their birth sex even if those employees hold a religious belief that individuals cannot "change" their God-given sex? Why doesn't that violate freedom of religion as well as freedom of speech?**

- Freedom of religion and freedom of speech are important to all of us. So is being able to work and use public spaces and services free from harassment or other discrimination. Referring to other people respectfully in public settings is a basic form of decency.
- The Equality Act **doesn't prohibit a person stating their beliefs, nor does it prohibit honest mistakes or isolated acts of incivility.** Just like other forms of discrimination, intentionally and continually calling an employee or customer names known to be offensive to them, because they are transgender, may constitute harassment in some cases. **Our laws have long recognized that harassment is not protected speech** just because words are used.



# The Equality Act: What It Means for the Jewish Community

*This extended version includes information on the Equality act that does not specifically affect Jewish organizations in Indiana*

**Many of the state laws barring sexual orientation and gender identity discrimination have much broader exemptions for religious organizations that respect religious freedom than are provided under the Equality Act. If those exemptions were considered appropriate in passing such state laws, why should federal law be different?**

- The Equality Act updates our longstanding civil rights laws to add protections from sex discrimination, including on the basis of sexual orientation and gender identity, and to expand covered public accommodations to address the problems we are facing today. The Civil Rights Act has existing religious exemptions that have worked well, and the Equality Act will not change those. It will simply treat discrimination based on sexual orientation and gender identity on the same terms. There is no reason for a different rule.

**What does the Equality Act mean for RFRA?**

- The Equality Act simply **clarifies that RFRA cannot be used to defend discrimination in public settings or with federal funds.** It does not alter or amend the RFRA standard for any other kinds of claims. When passed, the discussion and debate on **RFRA centered on how to protect minority religious practice, including ensuring Native Americans could engage in traditional religious practices, Jewish children could wear yarmulkes in public schools, or Muslim firefighters could wear beards. Nothing in the Equality Act changes that.**
- Courts have long-rejected religious claims as a reason to deny civil rights protections, including based on race and sex, and the same analysis applies to all other protected identities. **Specifically, religious belief did not excuse restaurants or hotels from following our civil rights laws in the 1960s and cannot do so today.**
- Freedom of religion is important to all of us. It's one of our nation's fundamental values. That's why it's already protected by the First Amendment to the Constitution. But that freedom does not give any of us the right to harm others or discriminate.