



United States House of Representatives

Committee on Oversight and Government Reform

“H.R. 2802: The First Amendment Defense Act”

July 12, 2016

Statement of the National Center for Lesbian Rights

The National Center for Lesbian Rights (NCLR) is a non-profit, public interest law firm that litigates precedent-setting cases at the trial and appellate court levels, advocates for equitable public policies affecting the lesbian, gay, bisexual, and transgender (LGBTQ) community, provides free legal assistance to LGBTQ people and their legal advocates, and conducts community education on LGBTQ issues. NCLR has been advancing the civil and human rights of LGBTQ people and their families across the United States through litigation, legislation, policy, and public education since it was founded in 1977. We appreciate the opportunity to provide this statement for the record in opposition to H.R. 2802.

**I. H.R. 2802 Would Harm Those Who Currently Suffer from Discrimination and Violence**

One month ago today, the LGBT community was devastated by a horrific hate crime in Orlando, Florida, in which the lives of 49 people were brutally taken. Rather than convening a hearing to address nonexistent threats that LGBT people are claimed to pose to First Amendment religious liberties, members of Congress should be exercising leadership in the face of widespread and ongoing discrimination and violence against LGBT Americans, people of color and the Muslim community. Expending legislative time and resources to advance legislation that would write into federal law sweeping exemptions from essential anti-discrimination laws is especially unfortunate – and deeply insensitive – at this particularly painful time in our nation. Instead, this Congress should swiftly consider and pass the Equality Act (H.R. 3185), a measure that would amend our existing civil rights laws to ensure that LGBT Americans are afforded the basic protections they need to live full and productive lives.

What happened in Orlando – while profoundly shocking in its magnitude - was not an isolated incident. Members of the LGBTQ community consistently make up the second-largest number of hate crimes victims every year.<sup>1</sup> Last year alone, the number of reported LGBTQ victims of

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<sup>1</sup> *Crime Statistics*, THE FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/stats-services/crimestats> (last visited July 7, 2016).

homicides increased by 20%.<sup>2</sup> Additionally, LGBTQ individuals and their families are more likely than their peers to experience homelessness, poverty, family disruption, obstacles to positive youth development, violence, and other difficulties.<sup>3</sup> In the absence of inclusive and comprehensive federal and state anti-discrimination laws, housing and employment discrimination continue to plague the LGBTQ community. H.R. 2802 would only exacerbate the institutional and societal bias that already subjects members of the LGBTQ community to disproportionate risks to their economic, physical, and social well-being.

## **II. H.R. 2802 Would Promote Taxpayer-Funded Discrimination**

H.R. 2802, if enacted, would be an invitation to engage in widespread and unprecedented taxpayer-funded discrimination against LGBT people, single mothers, and unmarried couples. The bill would:

- permit government employees to discriminate against married same-sex couples and their families -- federal employees could refuse to process tax returns, visa applications or Social Security checks for all married same-sex couples;
- allow businesses to discriminate by refusing to let employees care for a sick same-sex spouse, in violation of family medical leave laws;
- allow federal contractors or grantees, including those that provide important social services like homeless shelters or drug treatment programs, to turn away LGBT people or anyone who has a sexual relationship outside of a marriage;
- let commercial landlords violate longstanding fair housing laws by refusing housing to a single mother based on the religious belief that sexual relations are properly reserved to marriage;
- permit a university to continue to receive federal financial assistance even when it fires an unmarried teacher simply for becoming pregnant;
- impair the ability of federal agencies like the EEOC to enforce laws that offer protections to LGBT people from discrimination in education, employment or housing;

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<sup>2</sup> Emily Waters, et al., *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2015*, THE NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, 9 (2016), available at [http://www.avp.org/storage/documents/ncavp\\_hvreport\\_2015\\_final.pdf](http://www.avp.org/storage/documents/ncavp_hvreport_2015_final.pdf).

<sup>3</sup> Andrew Burwick, et al., *Human Services for Low-Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, xi (Dec. 2014), available at [http://www.acf.hhs.gov/sites/default/files/opre/lgbt\\_hsneeds\\_assessment\\_reportfinal1\\_12\\_15.pdf](http://www.acf.hhs.gov/sites/default/files/opre/lgbt_hsneeds_assessment_reportfinal1_12_15.pdf).

- prevent the government from refusing to employ an employee assistance counselor who lost their license or accreditation because of telling LGBT patients that their relationships are an abomination; and
- allow any of these individuals, businesses or groups, or anyone else who believes they may somehow be required by the federal government to do something that implicitly condones marriage for same-sex couples or sexual relationships outside of marriage, to file a lawsuit and potentially receive damages from taxpayer money.

Proponents of H.R. 2802 and similar legislation maintain that it is necessary to prevent the government from forcing churches to officiate same-sex weddings or else lose federal tax benefits. This is completely untrue. Clergy and houses of worship of all faith traditions are already protected under the Constitution, federal law, and Supreme Court precedents from being required to sanctify or approve of any marriage or other relationships that violate their religious tenets. H.R. 2802 would address a fictitious harm while imposing actual harms of millions of Americans.

### **III. Congress Should Not Advance Legislation That Has Been Rejected by the States and the Courts**

In the past two years, several state legislatures have introduced bills similar to H.R. 2802, which have elicited nationwide opposition and concern. For example, following enactment of Indiana’s so-called “religious freedom” law in 2015, both business leaders and members of the general public expressed such serious concerns about the law that the legislature was forced to quickly pass, and the governor to sign, an amendment to ensure legal protection for LGBT people. Measures in other states have been defeated after similarly encountering significant bipartisan opposition. One of the very few such measures that have been enacted into law, HB 1523 in Mississippi, was struck down two weeks ago by a federal district court judge, who found that it violated both the Establishment Clause and the Equal Protection Clause of the U.S. Constitution. U.S. District Court Judge Carlton W. Reeves, in a lengthy and detailed opinion, found that HB 1523 ran afoul of the First Amendment in two ways – by establishing “an official preference for certain religious beliefs over others” and because “its broad religious exemption comes at the expense of other citizens.”<sup>4</sup> H.R. 2802 would similarly violate the First Amendment, the very provision of the Constitution that it purports to defend.

These state-level versions of H.R. 2802 have been widely recognized, condemned and rejected as the broad attack on LGBT people that they are. Under the guise of invented threats to religious freedom, opponents of LGBT equality are now attempting to bring this misguided effort to enshrine discrimination to the federal level, through both amendments to appropriations measures stand-alone legislation such as H.R. 2802. This effort should be rejected.

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<sup>4</sup> *Barber v. Bryant*, 2016 WL 3562647, \*27, 31 (S.D. Miss. June 30, 2016).

#### **IV. Conclusion**

Religious freedom is a cornerstone of our nation. That venerable and foundational freedom has never been—and must not become—a license to mistreat and discriminate against others. The term “religious freedom” should not be misused to justify laws designed to stigmatize, isolate, and harm vulnerable and marginalized groups. H.R. 2802 seeks to empower those who wish to harm those families that look different from their own, or who differ from a particular vision of family promoted by certain religious tenets. LGBT couples, single mothers, and unmarried couples would become targets of legally sanctioned mistreatment. We urge this committee to reject this dangerous legislation and instead devote its efforts to ensuring that all people, and all families, are afforded the full and equal protection of our laws.