

December 12, 2017

Dr. Virginia Foxx  
Chairwoman  
Committee on Education and the Workforce  
U.S. House of Representatives  
2176 Rayburn House Office Building  
Washington, DC 20515

Mr. Robert C. "Bobby" Scott  
Ranking Member  
Committee on Education and the Workforce  
U.S. House of Representatives  
2101 Rayburn House Office Building  
Washington DC 20515

Dear Chairwoman Foxx and Ranking Member Scott:

The undersigned civil rights, faith, religious freedom, LGBTQ, and reproductive rights organizations write to express strong opposition to Sections 115, 117, 495(c), 496(7), and any other provision of H.R. 4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform Act, that would allow the use of religion to discriminate. We support amendments to strike these provisions.

Religious freedom is a fundamental right, protected by our Constitution and federal law. It guarantees us all the right to believe (or not) as we see fit. But it doesn't give anyone the right to use religion as an excuse to discriminate or harm others. These provisions would violate this core principle.

These provisions are designed to permit religious student groups and religiously affiliated colleges to disregard the rules, including bars on discrimination, all other schools and groups must follow. These broad, unwarranted, and unfair exemptions from laws and policies would result in taxpayer-funded discrimination.

#### **Section 115: Sanctions Discrimination by Religious Student Groups**

Colleges and universities often have nondiscrimination policies that require officially recognized student groups to allow any student to join, participate in, and seek leadership in those groups. These policies ensure that all students have an equal opportunity to participate in student groups at public colleges and universities and that the schools do not subsidize discrimination with tax dollars and tuition fees. In a 2010 case, *Christian Legal Society v. Martinez*,<sup>1</sup> the Supreme Court upheld one of these policies against claims that it violated the constitutional rights of a Christian student club.

Section 115 would create a special exemption just for religious clubs that would allow them to ignore such nondiscrimination rules and policies. As a result, it would force state schools to sanction and subsidize discrimination.

#### **Section 117: Creates FADA-like Provision for Religiously Affiliated Colleges and Universities**

This section bars federal, state, or local government from taking "adverse action" against colleges and universities if doing so would have the effect of "prohibiting or penalizing" the institution for actions that are "in furtherance of its religious mission." This sweeping provision is modeled after the highly controversial First Amendment Defense Act (FADA), and in many ways is broader and more harmful.

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<sup>1</sup> 561 U.S. 661 (2010).

Under this provision, colleges and universities could claim a right to ignore laws and policies that conflict with their religious beliefs. It threatens to undermine nondiscrimination protections at the federal, state, and local level and could harm LGBTQ people and women the most. These institutions could claim a right to discriminate against a woman who uses birth control or who is pregnant and unmarried, a man who marries his same-sex partner, or someone who gets divorced, just to name a few examples.

The right to believe is fundamental; the right to discriminate—especially with taxpayer dollars—is not.

### **Section 495(c): Codifies An Exemption from State Licensing and Authorizing Laws for Religiously Affiliated Colleges and Universities**

In order to be an eligible institution under the Higher Education Act, a college or university must be legally authorized by a state to offer post-secondary education. This section, however, permits religious institutions to escape that requirement: it declares them eligible to serve as an institution of higher learning if they are “exempt from any provision of State law” that requires these institutions to be authorized as a “religious institution.” The effect is to permit them to operate as a college or university solely because they are religious institutions.

### **496(7): Interferes with Accreditation Process**

Current law requires accrediting agencies to “respect the stated mission of the institution of higher education, including religious missions.” In 2008, report language stated unambiguously that this provision “does not change or alter current accreditation requirements . . . for the enforcement of nondiscrimination provisions.”<sup>2</sup>

This section of the bill, however, would create a sweeping exemption that would allow religious institutions to skirt accreditation requirements, including nondiscrimination provisions. The provision would bar an accrediting agency from applying a standard if the religiously affiliated college “determines that the standard induces, pressures, or coerces the institution to act contrary to, or to refrain from acting in support of, any aspect of its religious mission.” Thus, if the religiously affiliated college says an accreditation requirement—including nondiscrimination requirements for admissions, housing, employment, or student retention—interferes with what it says is its religious mission, it can still maintain its accreditation.

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We support amendments to strike all of these harmful provisions that are intended to create far-reaching religious exemptions. These provisions would result in discrimination and harm, and thus raise serious constitutional concerns.

Sincerely,

Advocates for Youth  
American Association of University Women (AAUW)  
American Atheists  
American Civil Liberties Union  
American Federation of Teachers  
Americans for Democratic Action (ADA)  
Americans United for Separation of Church and State

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<sup>2</sup> H.R. Rep. No. 110-500, at 273-74 (2007).

Anti-Defamation League  
Catholics for Choice  
Center For Inquiry  
CenterLink: The Community of LGBT Centers  
Clearinghouse on Women's Issues  
DignityUSA  
Equality California  
Feminist Majority Foundation  
GLSEN  
Human Rights Campaign  
In Our Own Voice: National Black Women's Reproductive Justice Agenda  
Lambda Legal  
The Leadership Conference on Civil and Human Rights  
Los Angeles LGBT Center  
Mazzone Center  
Medical Students for Choice  
NARAL Pro-Choice America  
National Abortion Federation  
National Asian Pacific American Women's Forum (NAPAWF)  
National Black Justice Coalition  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Council of Jewish Women  
National Education Association (NEA)  
National Institute for Reproductive Health (NIRH)  
National Latina Institute for Reproductive Health  
National LGBTQ Task Force Action Fund  
National Organization for Women  
National Partnership for Women & Families  
National Rural Education Association  
National Women's Law Center  
NEAT - the National Equality Action Team  
New School for Social Research  
New Ways Ministry  
Outserve - SLDN  
People For the American Way  
Planned Parenthood Federation of America  
Pride at Work  
Religious Institute  
Reproductive Health Access Project  
Secular Coalition for America  
Secular Policy Institute  
Secular Student Alliance  
URGE: Unite for Reproductive & Gender Equity  
Women's Alliance for Theology, Ethics, and Ritual (WATER)