

# Fairness for All Motion

## Motion

That the National Association of Evangelicals support principles calling on Congress to consider federal legislation:

- We believe that God created human beings in his image as male or female and that sexual relations be reserved for the marriage of one man and one woman.
- We support long-standing civil rights laws and First Amendment guarantees that protect free religious exercise.
- No one should face violence, harassment, or unjust discrimination on the basis of sex, sexual orientation, or gender identity.

*(Motion approved by the NAE Executive Committee 10/2/18)*

## Background Overview of Fairness for All and Possible Future Legislation (Based on principles)

Written by Shirley Mullen (President of Houghton College and member of NAE board & executive committee)

### *Cultural Context*

While the United States of America was founded on principles that sought to provide both freedom from a potentially coercive established state religion (“separation of church and state”) and freedom for the flourishing of religious activity according to the conscience of individuals (“free exercise” clause) this balanced tension has been difficult to preserve in practice. This framework of pluralism where multiple perspectives on religion — and other matters of worldview — are fostered and legitimized in the public square has been much more difficult to imagine and to realize than either the alternative of a dominant religious tradition or the alternative of secularity.

Though there was no established religion in 18<sup>th</sup> and 19<sup>th</sup> century America, the dominant cultural religious tradition — for historical rather than legal reasons — happened to be Protestant Christianity. For a range of reasons, including perceived tensions between science and religion, increased immigration from non-European contexts, the growing politicization of religion around particular ethical issues, this consensus changed in the 20<sup>th</sup> century. (For a fuller analysis of this transition, see Robert Putnam, “American Grace: How Religion Divides and Unites Us,” 2010). Increasingly, religious conviction is considered a matter of private conscience leaving the public arena dominated by the assumptions and the “faith” of secularity.

This cultural shift has, so far at least, left institutional churches protected under the legal tradition of “religious freedom.” It has resulted in the narrowing of the notion of “free exercise” of religion especially as this relates to institutions that carry on non-religiously explicit tasks but are nevertheless motivated by faith and informed by faith. These tasks include higher education, in addition to humanitarian organizations, adoption agencies and rescue missions, to mention just a few.

For example, in the past five years alone, Christian colleges and universities have faced challenges from the government to their right to accept state financial aid grants, legal challenges to their right to hire faculty and staff based on considerations of faith, limitations in their opportunities to post jobs in the bulletins of professional organizations or in certain online contexts, opposition to their prerogative to claim exemptions to Title IX legislation in the context of NCAA — and this trend shows every sign of continuing.

### *Timing*

We believe that now is the time to take deliberate action to reclaim the space for religious freedom that was intended in the founding of the United States. While religious freedom is no longer a noncontroversial bipartisan issue as it was in 1993 when Congress passed the Religious Freedom Restoration Act, there is likely to be more sympathy for protecting religious freedom in a Republican Congress than in a Democratic Congress. The Equality Act, which would undermine the provisions of the 1993 Religious Freedom Restoration Act and significantly threaten the ability of religious organizations to hire according to their faith convictions, has gained increasing favor each time it has been reintroduced in Congress. It is also heavily funded by a range of lobbying interests.

### *Strategy*

Despite the challenges of passing legislation in today's partisan environment, we strongly believe that this religious freedom is best secured in a legislative context rather than by executive order or rulings by the attorney general — both of which have expiration dates and can be undone by subsequent presidents and attorneys general. There is strong evidence that the Supreme Court supports religious freedom protections much more readily when these are grounded in specific legislation and not just appeals to the First Amendment.

While there is some legislative support for the First Amendment Defense Act (FADA), this support is less than the support for the Equality Act. Since the *Hobby Lobby* decision in 2014 and especially since the *Obergefell* decision in 2016, it has been easy for legislation supporting religious freedom to be seen as simply permission to discriminate.

**As Christian higher educators, we are increasingly persuaded that the most viable political strategy is for comprehensive religious freedom protections to be combined with explicit support for basic human rights for members of the LGBT community.** (These rights include basic legal and human rights related to housing, credit, jury duty and employment — and do not imply affirmation for particular lifestyle or moral choices.)

This proposed legislation known as Fairness for All, in no way argues against FADA, but seeks to offer an additional legislative option — one that we believe can garner bipartisan support.

As you can see from the material provided from the Council for Christian Colleges and Universities, this proposed legislation seeks to secure basic human rights for the LGBT community at the national level in exchange for strong and perpetual protections for religious freedom. The fact that these basic human rights for the LGBT community are already secured for nearly 60 percent of the country at either the state or local level suggests that the window for this exchange of protections at the national level is narrow. There is an opportunity in this moment that is not likely to

last.

*Critical Need to Support an Expansive Vision of Religious Freedom*

While the explicitly religious work of the denominations of the National Association of Evangelicals is not currently under threat from opponents of religious freedom, the work of the Church in the United States has never been seen as narrowly confined within the walls of church buildings. Churches have been vital to the volunteerism that created and sustained the humanitarian and charitable spirit in this country long before welfare was considered the work of the government. This is the moment when we as the NAE must stand up and affirm those who would advocate for a large vision for religious freedom — one that allows for one’s daily life to be informed by one’s fundamental spiritual and moral convictions, one that allows for religious conviction to be part of legitimate dialogue in the public square, and one that allows our society’s institutions to be seasoned by the motivations and insights of religious perspectives.

The very nature of the Protestant tradition with its many branches means that there is no central focus of authority or legitimacy within evangelicalism. There is no obvious circle of support for the work of Christian higher education in a moment like this when its very core mission is threatened. As one of the associations that seeks to secure the place of evangelical faith in our culture and in our world, it is in the NAE’s interest ultimately to secure the work of our colleges and universities so that they may continue to partner with the work of churches in preparing young men and women to serve as gospel salt and light in our world.

*Evangelical Witness*

It is a matter of strategic importance to support the CCCU in their work of securing space for religious freedom in our time. But that may not be the strongest argument for supporting this motion. As followers of Jesus Christ, we have been called to imitate his example of creating hospitable and surprising spaces in the world where the Holy Spirit can be at the work of drawing people to repentance and discipleship. We have often as evangelicals been more associated with judgment than grace-filled hospitality. We believe that Fairness for All legislation offers the best opportunity to create a civic society that secures freedom of conscience for all individuals and space for the grace and power of the gospel to be at work.