

July 12, 2016

Chairman Chaffetz
Ranking Member Cummings
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

On behalf of the National Women's Law Center, which has been working since 1972 to secure and defend women's legal rights and to help women and families achieve economic security, we write in opposition to the First Amendment Defense Act ("FADA"; H.R. 2802), a discriminatory bill that undermines and weakens established federal civil rights law—with particularly negative implications for unmarried working women. This bill is the latest attempt in a prolonged campaign to legislatively sanction discrimination against women, LGBTQ individuals, and others, under the guise of moral or religious beliefs. By prohibiting the federal government from penalizing otherwise unlawful behavior when it is motivated by a belief that marriage should be limited to different-sex couples and that sexual relations should only occur within such a marriage, FADA invites discrimination on the basis of sex, pregnancy, sexual orientation, and gender identity. LGBTQ women; unmarried women who use contraception or become pregnant; and unmarried mothers would all be targets of discrimination that the federal government would be prohibited from opposing under this bill.

For example, H.R. 2802 would empower federal contractors to terminate unmarried women who became pregnant, or women in same-sex married couples who become pregnant, by prohibiting the federal government from terminating any contract on the basis of actions motivated by a belief that sexual relations should only occur between married different-sex couples. The alternate version of the bill circulated by Senator Lee would have the same effect as to non-profit federal contractors. Similarly, both H.R. 2802 and Senator Lee's version would have the effect of prohibiting the federal government from enforcing Title IX's protections against pregnancy discrimination and sex discrimination if a school receiving federal grants sought to expel unmarried pregnant students or unmarried female students with children. Under both H.R. 2802 and Senator Lee's version, an insurance plan that denied coverage of contraceptives and maternity coverage for women not married to men, in violation of federal law, could not be excluded from the federal health insurance exchange on this basis. Both

versions of the bill would empower hospitals and other health care providers to deny reproductive health care to unmarried women. Indeed, the bill could give many employers the mistaken impression that they are permitted to discriminate against unmarried pregnant employees without fear of federal enforcement of Title VII of the Civil Rights Act of 1964¹ and the Pregnancy Discrimination Act (PDA).² For all these reasons and many more, FADA jeopardizes women's economic security and reproductive freedom. Deciding whether and when to have children is a private health decision of enormous economic consequence and women must be able to make that decision without fear of discrimination. We strongly oppose this bill's contravention of civil rights law and a woman's constitutional right to make reproductive health decisions, most recently affirmed in the case of *Whole Woman's Health v. Hellerstedt*.³

The bill also threatens grave harm to women in same-sex marriages or same-sex relationships, by hamstringing federal enforcement of a range of federal protections against discrimination on the basis of sexual orientation or gender identity. For example, H.R. 2802 would render enforcement of Executive Order 13672, prohibiting federal contractors from discriminating in employment on the basis of sexual orientation or gender identity, nearly impossible if a contractor claimed its discrimination was based on a moral objection to sexual relations outside marriage between different-sex couples. Senator Lee's alternative would have the same effect as to non-profit federal contractors.

Advancing legislation that promotes discrimination under the guise of religious or moral freedom is deeply harmful to women. It is time to end the campaign to undermine women's freedom to make personal health choices without interference or repercussions. We oppose FADA, which only promotes intolerance, discrimination, and inequality.

Sincerely,



Emily J. Martin
Vice President of Workplace Justice
& General Counsel
National Women's Law Center



Janel George
Director of Federal Reproductive
Rights & Health
National Women's Law Center

¹ *Id.*

² 42 U.S.C. § 2000e(k).

³ 579 U.S. ____ (2016).