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NATIONAL LGBTQ TASK FORCE ACTION FUND TESTIMONY REGARDING THE FIRST AMENDMENT DEFENSE ACT

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Exactly one month after the hate crime that killed 49 people at a gay nightclub in Orlando, we recognize the significance this hearing has in the national conversation on the rights and dignity of lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in the United States. We also note that in the month since this horrendous attack on the LGBTQ community, Congress has not held a single hearing on the needs of the victims, their families, and survivors, or on ways to better protect the LGBTQ community from additional hate crimes or discrimination.

It is critical that Congress sends a strong message that discrimination against LGBTQ people, even under the guise of religious liberty, cannot and will not be tolerated.¹ The National LGBTQ Task Force Action Fund asks the Committee to consider the substantial negative impacts that passing the First Amendment Defense Act (FADA) would have and the ways in which it would embolden others to attack our community. Many LGBTQ people are also people of faith; yet this bill disingenuously suggests that faith and LGBTQ identity are always at odds.

We submit this testimony in part to expose FADA for what it is – a license to discriminate. This bill does not exist in a vacuum. Its introduction and ongoing support operates within a context of pervasive anti-LGBTQ animus. The LGBTQ community is disproportionately targeted by discriminatory laws and harassment, and as a result, suffers increased rates of unemployment, poverty, sexual violence, health and mental health care discrimination, housing instability, and other disparities. Rather than promote religious freedom, FADA would further compound these systemic disparities and undercut the few protections LGBTQ people have against discrimination. For these reasons, the National LGBTQ Task Force Action Fund strongly urges the Committee not to move forward with the First Amendment Defense Act of 2015.

¹ American Psychiatric Association, *Leading Mental Health Organizations Urge an End to Harmful 'Religious Freedom' Laws*, April 20, 2016, <https://www.psychiatry.org/newsroom/news-releases/leading-mental-health-organizations-urge-an-end-to-harmful-religious-freedom-laws>. <https://www.psychiatry.org/newsroom/news-releases/leading-mental-health-organizations-urge-an-end-to-harmful-religious-freedom-laws>. <https://www.psychiatry.org/newsroom/news-releases/leading-mental-health-organizations-urge-an-end-to-harmful-religious-freedom-laws>. <https://www.psychiatry.org/newsroom/news-releases/leading-mental-health-organizations-urge-an-end-to-harmful-religious-freedom-laws>.

FADA builds upon a legacy of anti-LGBTQ discrimination

The tragedy in Orlando is not an isolated incident of violence against the LGBTQ community – over 20% of hate crimes in the U.S. target people based on their sexual orientation and/or gender expression.² Unfortunately, attacks on gay bars, which have historically served as community centers for LGBTQ people, are also not unprecedented. In 1969, in response to yet another targeted police raid, the patrons of Stonewall Inn began a powerful uprising that sparked the LGBTQ liberation movement.³ However, anti-LGBTQ violence has continued since then. Six years after Stonewall, a gay bar was set on fire in New Orleans, killing 32 people.⁴ In 1997, a bomber targeted an Atlanta lesbian bar in a hate-motivated attack against the “homosexual political agenda.”⁵ In 2000, a gunman opened fire at a gay bar in Virginia, and declared that he “was on a mission to kill gay people.”⁶

These attacks on the LGBTQ community are not random, disconnected events – they are part of an environment flooded by relentless anti-LGBTQ legislation. This year alone (noting that it is only early July), state legislatures have introduced over 150 anti-LGBTQ bills that would affect LGBTQ people’s ability to marry, adopt and foster children, access healthcare, education and homeless shelters, as well as public spaces and facilities.⁷ Thirty-five bills specifically targeted one of most marginalized groups within the LGBTQ community – transgender people.⁸

Transgender people are disproportionately affected by unemployment, poverty, harassment, sexual violence, and homelessness.⁹ Furthermore, this community, especially transgender women of color, are often targeted for

² The Federal Bureau of Investigation, *FBI Releases 2014 Hate Crime Statistics*, Nov. 16, 2015, <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2014-hate-crime-statistics>.

³ Garance Franke-Ruta, *An Amazing 1969 Account of the Stonewall Uprising*, Jan. 24, 2013, <http://www.theatlantic.com/politics/archive/2013/01/an-amazing-1969-account-of-the-stonewall-uprising/272467/>.

⁴ *After Upstairs Lounge Fire, Gay and Straight New Orleans Changed: Frank Perez*, June 22, 2013, http://www.nola.com/opinions/index.ssf/2013/06/after_upstairs_lounge_fire_gay.html.

⁵ NPR, *Full Text of Eric Rudolph’s Confession*, Apr. 14, 2005, <http://www.npr.org/templates/story/story.php?storyId=4600480>.

⁶ Chris Kahn, *Four Life Terms in a Gay Bar Shooting*, Jul. 23, 2000, <http://abcnews.go.com/US/story?id=92822&page=1>.

⁷ ACLU, *LGBT Nondiscrimination and Anti-LGBT Bills Across the Country*, <https://www.aclu.org/lgbt-nondiscrimination-and-anti-lgbt-bills-across-country>.

⁸ *Id.*

⁹ Jaime M. Grant, Ph.D. Lisa A. Mottet, J.D. Justin Tanis, D.Min., *Injustice at Every Turn: A Report on the National Transgender Discrimination Survey*, 2011 (finding that transgender and gender non-conforming children in grades

hate crimes. Last year alone, at least 21 were murdered in the United States.¹⁰ As of today's hearing, 14 transgender people have already been murdered this year.¹¹ There are countless others whose attacks go unreported or who are misgendered in news reports.

LGBTQ people already face termination, housing discrimination, and denial of healthcare access under state laws that enshrine discrimination in the name of religious liberty.¹² One hundred and ten of the anti-LGBTQ bills proposed this year specifically allowed discrimination under the guise of religious freedom – an increase from 79 last year.¹³ FADA will further exacerbate this discrimination and deny basic human rights to LGBTQ people.

It is especially difficult to believe FADA is intended to “[p]rotect...the free exercise of religious beliefs and moral convictions”¹⁴ when many of the bill’s supporters are members of Congress who have an established anti-LGBTQ track record. For example:

- A key Senator has been openly described as a good friend of Bryan Fischer, a radical radio personality who has compared gay people to terrorists.¹⁵ This comparison is especially distasteful in the light of the violent attacks the LGBTQ community has suffered, including the tragic events in Orlando.
- Another Senator started a GOP policy meeting with a Bible passage “calling for the death of homosexuals” and implied that colleagues who voted for a bill designed to protect LGBTQ people from discrimination were going to hell.¹⁶
- Yet another Senator has compared same-sex relationships to incest and pedophilia.¹⁷

K-12 reported 78% rate of harassment, 35% physical assault, and 12% sexual violence; further finding that 90% of transgender and gender nonconforming adults experienced harassment, mistreatment, or discrimination).

¹⁰ The Advocate, *These are the Trans People Killed in 2016*,

<http://www.advocate.com/transgender/2016/6/03/these-are-trans-people-killed-2016>.

¹¹ *Id.*

¹² ACLU, *supra* note 6.

¹³ ACLU, *Anti-LGBT Religious Exemption Legislation Across the Country*, <https://www.aclu.org/anti-lgbt-religious-exemption-legislation-across-country#2016>; ACLU, *supra* note 6.

¹⁴ First Amendment Defense Act, H.R. 2802, Sec. 3

¹⁵ RWW Blog, *Fischer: Gay Sex is Just Like Terrorism*, YouTube, Sep. 15, 2010,

https://www.youtube.com/watch?v=915mBWkoLiU&feature=player_embedded.

¹⁶ Jennifer Shutt, *Congressman Who Read Anti-Gay Bible Verse Prays for Orlando Victims' Loved Ones*, Jun. 15, 2016, <http://www.rollcall.com/news/policy/congressman-read-anti-gay-bible-verse-prays-orlando-victims>; see also Scott Wong and Mike Lillis, *Bible Verse Prompts GOP Walkout After LGBT Vote Labeled a Sin*, May 16, 2016, <http://thehill.com/homenews/house/281437-bible-verse-launches-gop-meeting-spurs-walkout>.

- In a statement denouncing same-sex marriage, a Senator implied same-sex parents were inferior and claimed that children of such parents would be “shortchanged.”¹⁸
- Another Senator has written that children are preyed upon by “pro-gay indoctrination and recruitment.” The same Senator later compared being gay to alcoholism and drug addiction, and supported conversion therapy, which has been banned in many states as dangerous.¹⁹
- One Senator attempted to remove protections for LGBTQ students, claiming that discussing sexuality in sex education is part of “an agenda” that is recruiting children into homosexuality.²⁰
- Another Senator claimed same-sex marriage is a threat to the survival of the United States.²¹

These remarks demonstrate a fundamental disrespect for – and in many cases explicit animus towards – LGBTQ people and our families, and fail to “contribute to a more respectful, diverse, and peaceful society.”²² If these are the “religious belief[s] or moral conviction[s]”²³ of some of the supporters of FADA, the discriminatory intent behind the bill cannot be any clearer. Anti-LGBTQ bills like FADA are instruments of discrimination against people whose basic human rights and dignity continue to be denied based on their sexual orientation and gender identity.

FADA will affect more than “gay weddings”

Given the discrimination, animus, and violence that LGBTQ people face, we expect Congress to take the lead in protecting the rights and dignity of this targeted community. Instead, FADA is being pushed forward to permit an unprecedented level of taxpayer-funded discrimination.

¹⁷ Zack Ford, *Vicky Hartzler’s Slippery Slope on Marriage: ‘Why Not Allow a 50-Year Old Man to Marry 12-Year Old Girl?’*, Jun. 3, 2011, <http://thinkprogress.org/lgbt/2011/06/03/235891/vicky-hartzlers-slippery-slope-on-marriage-why-not-allow-a-50-year-old-man-to-marry-12-year-old-girl/>.

¹⁸ Brian Tashman, *Huelskamp: Marriage Equality is Unpatriotic and Furthers ‘The Destruction of the Family,’* Apr. 1, 2013, <http://www.rightwingwatch.org/content/huelskamp-marriage-equality-unpatriotic-and-furthers-destruction-family>.

¹⁹ *Id.*

²⁰ Shawn Doherty, *Vital Signs: Grothman Suggests “Don’t Ask Don’t Tell” for State Schools*, Feb. 11, 2010, http://host.madison.com/ct/news/local/health_med_fit/vital_signs/article_f0ca35e4-1737-11df-b146-001cc4c03286.html.

²¹ Verbicide, *Top Seven Ridiculous Anti-Gay Marriage Quotes*, Jun. 19, 2012, <http://www.verbicidemagazine.com/2012/06/19/top-ridiculous-anti-same-sex-gay-marriage-quotes/>.

²² First Amendment Defense Act, H.R. 2802, Sec. 2(5).

²³ First Amendment Defense Act, H.R. 2802, Sec. 3(a).

Under current law, houses of worship already may decline to perform or recognize same-sex marriages without losing their tax-exempt status. FADA expands existing, narrowly tailored protections of religious institutions in a marriage context. In fact, the bill would allow anyone “regardless of religious affiliation or lack thereof, and regardless of for-profit or nonprofit status” to discriminate against same-sex couples, whether they are priests, business owners, or large for-profit corporations. Worse still, there is no definition of “religious belief” or “moral conviction,” which means potentially any kind of discrimination against LGBTQ people would be acceptable so long as the discrimination is claimed to be “in accordance with a religious belief or moral conviction.”

For example, federal employees could refuse to perform their duties if they disapprove of a person they are otherwise expected to assist, claiming that FADA gives them that right. This could result in individual employees declining to process paperwork such as SSI or SSDI applications, federal tax returns, federal student aid applications, or Social Security checks. These denials, and the ensuing lawsuits based on these FADA-enabled claims, would have significant, adverse consequences, particularly for low-income people. Statistics show that LGBTQ people are disproportionately impacted by poverty, and therefore more likely to rely on these services.²⁴

FADA would not fulfill its purported goal of “contribut[ing] to a more respectful, diverse, and peaceful society.” Instead, it would allow individuals to create hostile working environments that target their colleagues from diverse backgrounds.²⁵ A federal agency office, for example, would be forced to either hire someone as a counselor even though she has expressed outright animus against LGBTQ patients, or else risk a lawsuit under FADA. LGBTQ people are disproportionately impacted by mental health concerns such as depression, anxiety, and suicidality, and may be more likely to seek out their employer's counseling services. With FADA, however, these

²⁴ National LGBTQ Task Force, *Fact Sheet: Poverty & Economic Injustice in the LGBTQ Community*, Oct. 8, 2014 (Reporting that 24% of lesbian and bisexual women make less than the federal poverty line, compared to 19% of heterosexual women. Bisexual women are almost twice as likely as heterosexual women to receive food stamps. While 12% of children of different-sex couples live in poverty, almost 20% of children of women in same-gender couples and 25% of children of men in same-gender couples live in poverty; for children of Black men in same-gender couples, the number is over 50%) Available at http://www.thetaskforce.org/static_html/downloads/reports/fact_sheets/poverty_factsheet_10_8_14.pdf.

²⁵ H.R. 2802, Sec. 2(5).

federal employees or contractors would be subjected to this counselor's anti-LGBTQ hostility in their attempt to seek treatment.

FADA would carve out an enormous exception to existing federal laws, regulations, and guidance to allow any recipient of federal grants or any federal employee or contractor to violate nondiscrimination. A Head Start program could refuse to admit children of married same-sex couples. Federal contractors could refuse to provide spouse or dependent health insurance coverage to employees with same-sex spouses, refuse to grant leave to an employee to care for an ill same-sex spouse in violation of the Family and Medical Leave Act, or refuse to hire or promote married LGBTQ people in violation of a presidential executive order, all without any consequences.

Hospitals could deny visitation rights to same-sex couples and still keep Medicaid and Medicare funds. Emergency shelters receiving Violence Against Women Act funds could refuse to help LGBTQ survivors of domestic violence, placing survivors at high risk for immediate danger. A clinic receiving Ryan White HIV/AIDS Program funding could refuse to treat gay or bisexual men (or even men suspected to be gay or bisexual), particularly disadvantaging Black and Latino men in the LGBTQ community who are disproportionately impacted by HIV.

Students from graduate psychology or counseling programs who insisted on using conversion therapy with LGBTQ clients could still receive their degrees at colleges or universities receiving federal funds, even though the American Psychological Association standards and state accreditation boards reject the practice.²⁶ College and universities receiving federal funding could also fire faculty or staff upon learning of their sexual orientation or becoming pregnant while unmarried, without losing those funds.

Furthermore, FADA will exacerbate housing instability for LGBTQ people by circumventing fair housing laws and HUD guidance for nondiscrimination in homelessness services.²⁷ A landlord could refuse to rent to an unmarried lesbian because of "moral convictions." If the prospective tenant then became homeless and went with her same-sex partner to a shelter, staff could send them back to the streets because of a policy against "immoral

²⁶ American Psychological Association, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts*, <http://www.apa.org/about/policy/sexual-orientation.aspx>. <http://www.apa.org/about/policy/sexual-orientation.aspx>. <http://www.apa.org/about/policy/sexual-orientation.aspx>.

²⁷ Equal Access to HUD Programs Regardless of Sexual Orientation or Gender Identity, published in Federal Register vol. 77, no. 23, 5662, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=12lgbtfinalrule.pdf>.

sexual behavior.” Under FADA, that shelter could not only keep their tax-exemption but also retain HUD grants despite recent guidance against discrimination based on sexual orientation. As anywhere from 20 to 40% of all youth experiencing homelessness are LGBTQ: FADA's license to discriminate could severely undermine social services by increasing the risk that LGBTQ youth could be denied services, and prevent the federal government from rescinding grants to discriminatory programs.

Perhaps the most disturbing provision of FADA is that it would allow individuals, groups, or businesses to file lawsuits and receive money damages from taxpayer funds so long as they *believe* that the federal government *might* require them to implicitly condone same-sex marriage or even the existence of LGBTQ people. In the example of the homeless shelter, the shelter could actually demand money damages and essentially expect to the public to pay for their discrimination in addition to keeping its grant funds.

In the guise of protecting against discrimination, FADA would legally enshrine anti-LGBTQ discrimination, and allow anyone to discriminate – without consequences under existing federal protections – against someone known or believed to be in a same-sex partnership or unmarried heterosexual partnership.

Conclusion

We urge the Committee to reject the First Amendment Defense Act (FADA) as the most recent attempt to legislate hate. This bill does not fulfill its purported aim of protecting religious freedom but in fact only perpetuates existing prejudice against LGBTQ people. The National LGBTQ Task Force Action Fund believes in the importance of religion and promotes faith-based organizing. For many LGBTQ people, faith is a personal, positive, and affirming part of who they are. Nevertheless, we oppose the use of religion as a vehicle for discrimination. FADA distorts the principle of religious freedom and is an affront to basic human dignity.

In addition, this bill's introduction at the present time is perverse and insulting in the aftermath of a major violent attack on the LGBTQ community in Orlando, especially while Congressional lawmakers have failed to introduce any proposals to meaningfully address the causes of that violence. FADA is situated in a context of continuous anti-LGBTQ legislative proposals and overt violence targeting our community centers. We urge members of the Committee to vote against FADA and stand on the side of justice for all Americans.