



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 23, 2007
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 3685 – The Employment Non-Discrimination Act

(Rep. Frank (D) MA and 9 cosponsors)

H.R. 3685 would extend existing employment-discrimination provisions of Federal law, including those in Title VII of the Civil Rights Act of 1964, to establish “a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation.” The bill raises concerns on constitutional and policy grounds, and if H.R. 3685 were presented to the President, his senior advisors would recommend that he veto the bill.

H.R. 3685 is inconsistent with the right to the free exercise of religion as codified by Congress in the Religious Freedom Restoration Act (RFRA). The Act prohibits the Federal Government from substantially burdening the free exercise of religion except for compelling reasons, and then only in the least restrictive manner possible. H.R. 3685 does not meet this standard. For instance, schools that are owned by or directed toward a particular religion are exempted by the bill; but those that emphasize religious principles broadly will find their religious liberties burdened by H.R. 3685.

A second concern is H.R. 3685’s authorization of Federal civil damage actions against State entities, which may violate States’ immunity under the Eleventh Amendment to the U.S. Constitution.

The bill turns on imprecise and subjective terms that would make interpretation, compliance, and enforcement extremely difficult. For instance, the bill establishes liability for acting on “perceived” sexual orientation, or “association” with individuals of a particular sexual orientation. If passed, H.R. 3685 is virtually certain to encourage burdensome litigation beyond the cases that the bill is intended to reach.

Provisions of this bill purport to give Federal statutory significance to same-sex marriage rights under State law. These provisions conflict with the Defense of Marriage Act, which defines marriage as the legal union between one man and one woman. The Administration strongly opposes any attempt to weaken this law, which is vital to defending the sanctity of marriage.

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