



November 1, 2023

BY ELECTRONIC SUBMISSION

Equal Employment Opportunity Commission

Re: Request for Public Comment Concerning Proposed Enforcement Guidance on Harassment in the Workplace.

Dear Sir or Madam:

The Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) respectfully submits the following comments regarding our concerns with the proposed “Enforcement Guidance on Harassment in the Workplace.”

The ERLC is the public policy and ethics entity of the SBC, which has nearly 14 million members in over 50,000 churches in the United States. We are charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and human dignity.

The Equal Employment Opportunity Commission’s proposed enforcement guidance deeply concerns Southern Baptists due to the expansion of “sex-based harassment” to include “pregnancy, childbirth, or related medical conditions” and “sexual orientation and gender identity.” First, this enforcement guidance continues to include concerning language that lists abortion procedures as “pregnancy, childbirth, or related medical conditions,” an issue the ERLC similarly addressed in comments submitted for the Pregnant Workers Fairness Act just three weeks ago. Secondly, the proposed enforcement guidance appears to consider the use of pronouns and names based upon an individual’s biological sex to be grounds for workplace harassment, without providing protection for deeply held religious convictions.

Every human being has inherent dignity, and every life should be protected.

God has spoken clearly throughout Scripture regarding the value and dignity of every human being as created in the image of God as well as the goodness of his design for every aspect of human life in accordance with his will (Gen. 1:26-30; Matt. 19:4; Luke 12:22–31; 2 Cor. 5:17-21; 1 Pet. 1:13-16). Every person matters because every person is created in the image of God.

These convictions lead us to have grave concerns about the Commission’s inclusion of abortion in its list of “pregnancy, childbirth, or related medical conditions” in the proposed enforcement



guidance. Abortion takes the life of an innocent child, and thus should never be sanctioned, promoted or protected in any capacity, especially by a government whose founding documents enshrine this right to life.

Discussions surrounding abortion should not be relegated to the realm of workplace harassment for the simple fact that for the preborn children and the mothers who are harmed, abortion is a matter of life and death. Impediments to free discussion furthering the protection of preborn lives infringes upon the conscious rights of Americans as well as our right to freely live out the tenets of our closely held religious beliefs.

Any attempt to engage in or support “gender transitions” rejects God’s design for human flourishing and harms our neighbor.

Just as God’s Word teaches that all human beings are created by God and endowed with inherent value and dignity, it is clear that the God who made each of us is a good and sovereign God. He is all-knowing and both his nature and actions are good. As a result, no person is created with the wrong biological sex.

Flowing out of the belief that all persons are created in God’s image and loved by him, Southern Baptists view individuals seeking to “gender transition” with compassion. In the 2023 [“Resolution On Opposing ‘Gender Transitions.’”](#) Southern Baptists stated the necessity to “extend the love of Christ, who can save anyone who would call on His name, as well as compassionate care and tender mercy to those experiencing identity or body-related distress and/or are currently undergoing or have undergone ‘gender transition’ interventions.” Additionally, in the same resolution, Southern Baptists stated the reality that such transitions are not solely “spiritually destructive,” but additionally, the associated surgical procedures and prescribed hormones also cause fertility issues. Even if later reversed, these procedures may cause lifelong medical dependency, and contain other unknown long-term consequences.

Southern Baptists believe that “gender transition” must be viewed through the lens of God’s Word. To do otherwise is to withhold compassionate, loving truth from a man or woman who desperately needs it. By requiring pronoun usage or the usage of names that do not align with a man or woman’s biological sex, the EEOC is requiring that many employees forsake their conscience by repeatedly caving to an ideology forced upon them, thus compelling them to betray their deeply held religious beliefs regarding what is true and good. This is the very definition of religious harassment in the workplace.



Based upon the well-established tenets of our Constitution, individuals must be permitted to act in congruence with their deeply held religious beliefs without fear of being persecuted or harassed in return. In fact, the EEOC itself lists religion as a legally protected characteristic, but the proposed enforcement guidance is ambiguous regarding religious protections, like those enshrined in the Religious Freedom Restoration Act.

Additionally, expanding the definition of “sex-based harassment” to include “denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity” poses public safety concerns, particularly for women. It does not fall under the jurisdiction of the EEOC to determine whether such action is wise or recommended for public safety, much less to expand the definition of sex-based harassment to prohibit even questioning the usage of facilities contrary to a man or woman’s biological sex. Impeding upon the free speech of an employee to express concerns regarding their personal safety is not a matter of workplace harassment and should not be treated as such.

Furthermore, such guidance would effectively erase sex-segregated spaces, leaving women vulnerable. This loss of protection provides opportunities for abuse and, ironically, could create a workplace environment rife with sexual harassment, where women are not even able to voice concerns for their own public safety. As the EEOC itself stated, viable accusations of workplace harassment include “conduct that constructively changes the terms or conditions of employment through creation of a hostile work environment.” There is no more hostile work environment than one that silences women, and by the EEOC’s own definition, this enforcement guidance itself “constructively changes the terms or conditions of employment.”

The EEOC’s proposed enforcement guidance infringes upon religious freedom and does not provide sufficient clarity on how the agency intends to navigate conflict between the existing legally protected characteristics and the newly-expanded definitions provided.

The EEOC claims that this proposed guidance is subregulatory in nature and thus does not require rulemaking authority. However, by expanding the list of legally protected characteristics and superseding prior guidance, the EEOC is providing direction to be used by employers, EEOC investigators, the courts, and other interested parties in how the agency seeks to enforce the law.

We strongly believe that the proposed enforcement guidance will lead to violations of the consciences of religious individuals by requiring them to affirm “gender transitions” and “abortion” as a legitimate medical procedure to the detriment of their conscience and personal safety.



THE ETHICS & RELIGIOUS
LIBERTY COMMISSION
OF THE SOUTHERN BAPTIST CONVENTION

OFFICE OF THE PRESIDENT

Thank you for the opportunity to comment.

Respectfully submitted,

Fredrick Brent Leatherwood
President
Ethics & Religious Liberty Commission
of the Southern Baptist Convention