Columbia Law School

Scholarship Archive

Center for Gender & Sexuality Law   Research Centers & Programs

3-2018

"First Amendment Defense Act" (FADA) is Reintroduced in the Senate

Public Rights/Private Conscience Project

FOR IMMEDIATE RELEASE: March 8, 2018

SUBJECT: "First Amendment Defense Act" (FADA) is reintroduced in the Senate. Bill would establish vague, overly broad, and unnecessary religious accommodations and would seriously harm other Americans' legal rights and protections.

FROM: The Public Rights/Private Conscience Project (PRPCP), Columbia Law School

CONTENT: **"Not only is this bill unnecessary to the protection of religious liberty in the United States, its language would be harmful to the constitutional rights of millions of Americans."**

CONTACTS: Professor Katherine Franke, 212-854-0061, kfranke@law.columbia.edu
Elizabeth Reiner Platt, 212-854-8079, ep2801@columbia.edu

New York, March 8, 2018–The Public Rights/Private Conscience Project is dismayed that the deceptively named "First Amendment Defense Act" (FADA) was reintroduced into the U.S. Senate today by Sen. Mike Lee (R-Utah) and 21 Republican co-sponsors, including Sens. Marco Rubio (Fla.), Ted Cruz (Texas) and Orrin Hatch (Utah). Not only is this bill unnecessary to the protection of religious liberty in the United States, its language would be harmful to the constitutional rights of millions of Americans.

The Public Rights/Private Conscience Project Faculty Director, Columbia Law Professor Katherine Franke, testified against the First Amendment Defense Act on behalf of twenty leading legal scholars when it was pending in Congress in 2016. In her testimony before the House Governmental Oversight Committee she provided an in depth analysis of the meaning and likely effects of the proposed legislation, were it to become law. The Public Rights/Private Conscience Project was particularly compelled to provide testimony to the Committee because the first legislative finding set out in FADA declares that: "Leading legal scholars concur that conflicts between same-sex marriage and religious liberty are real and should be addressed through legislation." As leading legal scholars we must correct this statement: we do not concur that conflicts between same-sex marriage and religious liberty are real, nor do we hold the view that any such conflict should be addressed through legislation. On the contrary, we maintained that religious liberty rights are already well protected in the U.S. Constitution and in existing federal and state legislation, rendering FADA both unnecessary and harmful.

The Act purports to protect free exercise of religion and prevent discrimination, yet in fact it risks unsettling a well-considered constitutional balance between religious liberty, the prohibition on government endorsement of or entanglement with religion, and other equally fundamental rights.

Professor Franke's testimony can be found here.

This legislation failed to come to a vote and died in Committee in 2016. It should receive the same fate today.

@PRPCP_Columbia   facebook.com/PRPCP   @PRPCP_Columbia

The Public Rights/Private Conscience Project

The Public Rights/Private Conscience Project's mission is to bring legal academic expertise to bear on the multiple contexts in which religious liberty rights conflict with or undermine other fundamental rights to equality and liberty.   We undertake approaches to the developing law of religion that both respects the importance of religious liberty and recognizes the ways in which too broad an accommodation of these rights threatens Establishment Clause violations and can unsettle a proper balance with other competing fundamental rights. Our work takes the form of legal research and scholarship, public policy interventions, advocacy support, and academic and media publications.

To learn more, please visit us at http://www.law.columbia.edu/gender-sexuality/public-rights-private-conscience-project

@PRPCP_Columbia   facebook.com/PRPCP   @PRPCP_Columbia