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Hon. Linabelle Ruth R. Villarica
Chairperson
Committee on Women and Gender Equality
3/F Ramon V. Mitra Building, Batasan Pambansa Complex
Constitution Hills, Quezon City 1126

Re: Draft Consolidated Substitute Bill Prohibiting Discrimination on the Basis
Of Sexual Orientation or Gender Identity (SOGI), Providing Penalties Therefor
And For Other Purposes

Dear Hon. Chairman Villarica:

Alliance for the Family Foundation Philippines, Inc. (ALFI), respectfully submits the following discussion for consideration with regard to the Draft Consolidated Substitute Bill Prohibiting Discrimination On The Basis Of Sexual Orientation or Gender Identity (SOGI), Providing Penalties Therefor and for Other Purposes.

The Alliance for the Family wholeheartedly agrees that the State must respect its constitutional obligation not to deny individuals equal protection of the laws, as guaranteed under Section 1, Article III of the Constitution. The discrimination sought to be avoided by the Constitution encompasses all discriminatory practices based on unreasonable classifications.

However, this bill goes far beyond mere anti-discrimination. It changes the historical and previously universally accepted meaning of words, by legislating marriage between persons of the same sex. Through all of human history prior to the present, marriage has been a relationship between persons of the opposite sex. A change of such magnitude should not reasonably be made without a prolonged and profound national discussion of its meaning and consequences for people and society.

In addition, the proposed law is unwise and cannot be implemented fairly. Rather than eliminating unfair discrimination, it will create additional instances because it encompasses concepts that are not suitable for legislating. Gender Identity and Sexual Orientation are categorically different concepts: the former is subjective, the latter objective. (This distinction is the fundamental rationale for the freedom of thought and of religion that are nearly-universally accepted rights.)

We refer to the World Health Organization definitions of Sex and Gender:
(<http://www.who.int/gender/whatisgender/en/>)

*"Sex" refers to the biological and physiological characteristics that define men and women.
"Gender" refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.*

To put it another way:

"Male" and "female" are sex categories, while "masculine" and "feminine" are gender categories.

Aspects of sex will not vary substantially between different human societies, while aspects of gender may vary greatly.

Some examples of sex characteristics:

Women menstruate while men do not

Men have testicles while women do not

Women have developed breasts that are usually capable of lactating, while men have not

Men generally have more massive bones than women

Some examples of gender characteristics:

In the United States (and most other countries), women earn significantly less money than men for similar work

In Viet Nam, many more men than women smoke, as female smoking has not traditionally been considered appropriate

In Saudi Arabia men are allowed to drive cars while women are not

In most of the world, women do more housework than men

Consider also the American Psychological Association (APA) Definition of Terms:

(Excerpt from: The Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients, adopted by the APA) Council of Representatives, February 18-20, 2011. The Guidelines are available on the APA website at <http://www.apa.org/pi/lgbt/resources/guidelines.aspx>)

Sex refers to a person's biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female).

There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.

Gender identity refers to "one's sense of oneself as male, female, or transgender" (American Psychological Association, 2006). When one's gender identity and biological sex are not congruent, the individual may identify as transsexual or as another transgender category (cf. Gainor, 2000).

Common to both sets of definitions is that they regard gender as a set of attitudes, feelings and behavior – thereby subjective and transitory and relative to a socially accepted norm. There can be behaviors that may conform to social norms and behaviors that do not.

What constitutes an act of gender discrimination? There is a debate between the preferences of one group or one person, versus the sensibilities of another group, or of society in general.

Under this bill, discrimination *shall be understood to imply any distinction, exclusion, restriction, or preference which is based on any ground such as sex, sexual orientation, gender identity, whether actual or perceived, and which has the purpose or effect of nullifying or impairing the recognition, access to, enjoyment, or exercise by all persons of an equal footing of all rights and freedoms.*

Consider an example: a biological male uses a ladies' restroom. If hindered from doing so, that constitutes discrimination under the proposed law. But if biological females who are present perceive the presence of the male in the female restroom as offensive and insensitive, their sensitivities are ignored. Some person's sensitivities are established as more important than other's. The former are discriminated for, and the latter are discriminated against. This is discrimination enforced by law, and is therefore unjust. It is a greater injustice if the group discriminated against is in the majority. There is a natural limit to enjoying on equal footing all rights and freedoms when this is against the social norm, because it is impossible for everyone to enjoy them at the same time.

Another example: a male pre-school teacher cannot be granted full freedom to cross dress, wear make-up and pearls like fellow female school teachers, because some parents of pre-school students do not want them exposed to persons who could tend to influence them to become confused about their sexuality. These parents have a Constitutional right to determine how their children are raised. But hindering the teacher from doing so would be an act of criminal discrimination under the proposed law. The State would discriminate against the rights of some persons to give new rights to others.

A third example: A biological female who identifies as male uses a male locker room. This creates a situation of sexual danger that no law can possibly protect women from, reaching into the genetic basis of reproduction of the species. The State will sometimes, but not always, be able to identify and punish those who commit a criminal act as a consequence of such a situation, but that will never make whole those who became its victim because the existence of an unwise law influenced their actions.

We point out that if the bill is enacted unchanged, any man may use a women's restroom without challenge and vice-versa, because discrimination on the basis of perceived gender identity is prohibited. Anyone who raises any objection to this would thereby be guilty of a crime punishable by fine or imprisonment, even if not actually arrested and charged at the time. Since there are usually no age restrictions in the use of restrooms, public or private, this will include adult men who prefer to use the girls' restrooms in schools or similar locations.

In short, inclusion of gender identity in this legislation may well result in such public confusion and dissatisfaction as to vitiate or even reverse its effectiveness in eliminating discrimination on the basis of sexual orientation.

Sections 4.g. and 7 of the bill arbitrarily and unwisely attempt to abrogate the rights of parents over the upbringing of their children which are explicitly set forth in Article 2 Section XII of the Constitution: the former because it requires the consent of the Family Court for a parental responsibility, and the latter because it allows unrelated third parties to interfere with parent's upbringing of their children. In this regard, according to Dr. Paul R McHugh, University Distinguished Professor of Psychiatry at the Johns Hopkins University School of Medicine, studies show that between 70% and 80% of children who express transgender feelings "spontaneously lose those feelings" over time.

Section 7 is also discriminatory, because it confers on some classes of persons rights which are not given to other equally or more disadvantaged classes, for example, poor or marginalized persons, with regard to special assistance in police matters.

It is important to note that the substance of the provisions of “Section 4. Discriminatory practices” is already covered by various articles in Chapter 2 of the Civil Code. It is our strongly-held belief that this civil-law approach is far superior to criminalizing aspects of relationships between people, as it is much more likely to avoid simply fostering additional friction, and even animosity, between those sought to be protected and those who treat them unfairly. This is especially true when the unfairness arises from inherited cultural values that can only be effectively changed over time, rather than simply abrogated. Legislating the latter may very well intensify those values, rather than ameliorating them. There is the additional consideration that enacting legislation which criminalizes discrimination against only one group of persons, while many others are routinely subjected to similar discrimination, is not only unfair in itself, but is likely to be perceived as the granting of special privileges to members of that group. This will lead to resentment, fostering ill-will.

With regard to employment discrimination, the bill lacks a stated exemption for religious institutions in the hiring of clergy and educational personnel based on policies anchored on religious beliefs and practices. The majority of Filipinos are members of the Roman Catholic Church, which, “while profoundly respecting the persons in question,” forbids ordaining or training homosexual clergy. (Instruction Concerning the Criteria for the Discernment of Vocations with regard to Persons with Homosexual Tendencies in view of their Admission to the Seminary and to Holy Orders, *Congregation For Catholic Education*). A significant minority of Filipinos practice Islam, which has similar restrictions. Other religions do, as well. This is certainly an issue that must be dealt with in any version of the bill which is enacted into law, in order to comply with the Constitutional mandate for free exercise of religion.

The proposed law is also objectionable in that it would criminalize persons who make good-faith judgments about the suitability of a particular person for a particular job, have no criminal or even malicious intent, and are unaware that their judgment is illegal. Law should not be used as a trap to ensnare the unwary. This is necessarily highly discriminatory in itself. One injustice should not be redressed by another.

Alliance for the Family Foundation strongly urges that this draft law not be enacted without addressing these concerns. It is our belief that failure to do so will produce an unjust and untenable law.

Thank you for your kind consideration of our views.

Very truly yours,

(Original signed)
Timothy A. Laws
Chairman