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7 February 2023

The Honorable Rep. Geraldine B. Roman

Chairperson, Committee on Women & Gender Equality
3/F RVM Building
The House of Representatives
Constitution Hills, Quezon City 1126

Subject: House Bill Nos. 222, 460, 3418, 3702, 4177, 4277, 5551 & 6003

Dear Chairperson Roman:

We understand that your Committee will be conducting a hearing to consider House Bill Nos. 222, 460, 3418, 3702, 4177, 4277, 5551 & 6003 on the Act Prohibiting Discrimination on the Basis of Sexual Orientation or Gender Identity or Expression (SOGIE).

We are attaching our Position Paper in opposition to these bills.

Thank you very much for your consideration of our views.

Very truly yours,

MARIA CONCEPCION S. NOCHE
President

JESUS JOEL MARI D. ARZAGA
Vice President

**Position Paper on House Bill Nos. 222, 460, 3418, 3702, 4177,
4277, 5551 & 6003**

1. The Alliance for the Family Foundation Philippines, Inc. (“ALFI”) recognizes the legislative intent of the various SOGIE Bills (“the SOGIE Bills”) of eliminating undue discrimination and violence against all persons. Any form of undue discrimination or violence is reprehensible and is contrary to the State’s Constitutional mandate to value the dignity of the human person and to guarantee full respect for human rights.
2. For this reason, ALFI urges for stricter implementation of current laws which already address undue discrimination and forms of violence, such as our Revised Penal Code, the Violence Against Women and Children Act, the Safe Spaces Act, the Magna Carta for Women, and the Bill of Rights. These laws are operative, the rights they provide are accessible to all, and the remedies they offer are available for all.
3. ALFI takes note that the SOGIE Bills aim to penalize discriminatory practices that may not be addressed sufficiently by current laws.
4. However, in the SOGIE Bills’ pursuit of this, it interferes with other Constitutional liberties, goes beyond the mere intent of curbing undue discrimination and violence, and ventures into a state-sponsored promotion of a particular gender ideology through definitions, proposed government programs and policies, information and education campaigns, and even media portrayals.
5. It is these concerning features of the SOGIE Bills that ALFI respectfully expresses its opposition to. ALFI submits that the fight against undue discrimination and violence may be endeavored without infringing on Constitutional rights and without institutionalizing an ideology that puts a premium on a person’s preference of identity at the risk of criminal liability for those who do not agree.
6. ALFI, in particular, expresses its concern and opposition to the following:

I. The definition of “Discrimination”, in so far as it includes any distinction, exclusion, restriction, or preference based on sex.

The SOGIE Bills purport to outlaw and consider as “discrimination” existing distinctions and classifications based on bona fide, objective, immutable, and biological differences between a man and a woman.

This definition will have serious implications on sex-specific educational institutions (all-boys and all-girls schools, seminaries, and formation houses), sex-specific establishments and facilities (dormitories, convents, comfort

rooms) sex-specific professions (ecclesiastical professions), sex-specific associations (fraternities and sororities), and sex-specific sporting events (contact sports).

The policies of these sectors rooted on distinctions based on sex are impaired, if not effectively nullified, as those who will implement or apply these may face criminal prosecution, hefty fines, or imprisonment for committing a discriminatory practice under the SOGIE Bills' catch-all "analogous acts" provision.

The SOGIE bills, if passed into law, may force these sectors to implement policy changes in violation of their academic freedom, religious freedom, property rights, freedom of association, the right against impairment of contracts, all equally recognized and guaranteed by the Constitution.

This definition in the SOGIE Bills also affects and complicates laws anchored on distinctions based on sex, especially since the SOGIE bills state that the actual sex ... of the person subjected to discrimination" is not "relevant for the purpose of determining whether an act of discrimination has been committed."

For example, the Family Code, which defines marriage as between a man and a woman – will it now be discriminatory to deny marriage between a man and another man who identifies as a woman?

The Magna Carta for Women, which seeks to eliminate discrimination against women – will it now be discriminatory to deny access to its benefits to a man who identifies as a woman?

The penal laws on rape through sexual intercourse which can only be committed by a man against a woman – can an accused man, who identifies as a woman, now question this law's application for being discriminatory?

Biological realities should not be disregarded and sacrificed to accommodate individual convictions. ALFI urges this body to acknowledge and uphold the wisdom and merit behind the timeless and universally accepted distinction based on sex as essential to public order and the common good.

II. The definitions of gender identities.

The SOGIE Bills also define gender identities in a manner that is subjective, fluid, and unstable, as one's emotional attractions and choice of "identity" are made the basis and are the determining factors. It bears emphasis that these factors are not tangible, not always externally manifested, and may even unilaterally change at any time.

This uncertainty presents problems in the implementation of the SOGIE Bills as a penal statute, since it is unable to identify clearly and categorically those covered by the protections it offers.

Those who wish to avoid liability under the SOGIE Bills are likewise not sufficiently guided as regards the persons against whom the discriminatory practices may be committed. In fact, the disclosure of one's SOGIESC is also proscribed.

Lastly, the codification of these gender identities would carry with it the recognition of certain phenomena that lack scientific and objective bases, which may not necessarily be a prudent subject of legislation.

III. Specific Discriminatory Practices

The SOGIE Bills also oversteps in declaring as unlawful certain practices that are supposed to be within an individual's constitutional rights.

III.(a) Advertising, producing, and publishing in the media, in educational textbooks, and other medium that has the effect of promoting, encouraging and perpetuating stigma or inciting violence and sexual abuse against any person or group on the basis SOGIESC:

This appears to be a content-based prior restraint that unduly restricts individuals' freedom of speech, of expression, and of the press and must, therefore, be given the strictest scrutiny in light of its inherent and invasive impact.¹

III. (b) Refusing admission or expelling a person from any educational or training institution ... on the basis of SOGIESC:

This provision runs afoul educational institutions' academic freedom which includes the right to determine the qualifications of applicants, the right to deny applicants, and the right to discipline students.

Sex-specific educational institutions will be at a particular risk of liability if the SOGIE Bills are passed since they would have to enforce admission policies inherently grounded on distinctions based on sex. Will administrators of seminaries or formation houses now be liable for denying admission to a person who has a different SOGIESC from what their particular educational institution requires?

¹ (Nicolas-Lewis v. COMELEC, G.R. No. 223705, citing Chavez v. Gonzales)

III. (c) Denying an application for or revoking a professional or other similar kind of license, clearance, certification, or any other similar document issued by the government due to the applicant's SOGIESC:

Pursuant to existing laws on marriage, the SOGIE Bills must expressly exclude marriage licenses in the government documents that may not be denied on the basis of an applicant's SOGIESC. It is noteworthy that not all the House Bills which carve out this exception.

III (d) Denying a person access to the use of establishment, facilities, utilities, or services... open to the general public on the basis of SOGIESC:

This unduly restricts property rights of individuals which include their freedom to decide that certain portions of their properties be reserved for a particular sex and for a particular purpose, such as a sex-specific dormitory, locker room, washroom, breast-feeding room.

III (e) Preventing a child under parental authority, custody, or guardianship... from exhibiting or expressing one's sexual orientation or gender identity.

This provision infringes on parents' parental authority and their natural right and duty to rear their children. Parents with moral and religious beliefs that are contrary to the definitions and philosophies on gender identities espoused by the SOGIE Bills will be unduly hindered in giving guidance to their children.

A child, at this delicate stage, is not fully cognizant of the complexities of sexual orientation and gender identities and must not be allowed unguided or unrestricted discretion in their actions in this regard.

ALFI submits that the right of the parents to educate their children and inform their decisions on these matters is superior to that of the State, whose role is merely secondary and complementary.

IV. State-Sponsored Promotion of Gender Ideologies

Finally, ALFI opposes the SOGIE Bills as it institutionalizes a state-sponsored promotion of gender ideologies without due consideration of individuals with opposing or contrary views.

In its aim to eliminate undue discrimination, the SOGIE bills aim to embed belief in its definitions of gender identities in government programs and policies, information and education campaign, and the media, to the detriment of those who do not subscribe to these ideologies for being in conflict with their moral convictions and religious beliefs.

ALFI reiterates that the fight against undue discrimination may be endeavored without forcing belief in matters that remain highly contentious and unresolved.

7. ALFI enjoins the State to adopt a holistic and encompassing approach in the efforts to eliminate undue discrimination and violence against persons without disregarding established truths about the human person. Only when a person is regarded as he truly is – consistent with his dignity – will there be authentic freedom and equality.