



United States Conference of Catholic Bishops

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July 9, 2013

United States Senate
Committee on Health, Education, Labor and Pensions
Washington, DC 20510

Dear Senator:

We write to you regarding S. 815, the Employment Non-Discrimination Act of 2013 (ENDA). Our purpose is to outline the serious concerns we have with this particular piece of legislation and why we must oppose it.

For the sake of clarity, permit us to state a few basic truths found in nature that the Catholic Church affirms in its teachings on this subject. First, being a male or a female is “a reality which is good and willed by God,” and “everyone, man and woman, should acknowledge and accept his [or her] sexual identity.” Second, persons with a homosexual inclination “must be accepted with respect, compassion, and sensitivity,” while “under no circumstances can [homosexual acts] be approved.” *Catechism of the Catholic Church* (“CCC”), nos. 369, 2333, 2357-58.

Catholic teaching states that all people are created in the image and likeness of God and thus possess an innate human dignity that must be acknowledged and respected, by other persons and by law. No one should be an object of scorn, hatred, or violence for any reason, including sexual inclination. The Church affords special concern and pastoral attention to those who experience a homosexual inclination and stands committed to avoid “every sign of unjust discrimination in their regard.” CCC, no. 2358.

The Catholic Church makes an important distinction between actions and inclination. While the Church is ardently opposed to all unjust discrimination on the grounds of sexual inclination, whether homosexual or heterosexual, it does teach that all sexual acts outside of a marriage between one man and one woman are morally wrong and do not serve the good of the person or society. Homosexual conduct, moreover, is categorically closed to the transmission of life, and does not reflect or respect the personal complementarity of man and woman. The Catholic Church’s teaching against this conduct cannot, therefore, be equated with “unjust discrimination,” because the teaching is based on fundamental truths about the human person. In contrast to sexual conduct within marriage between one man and one woman—which does serve both the good of each married person and the good of society—heterosexual conduct outside of marriage and, a fortiori, homosexual conduct has no claim to any special protection by the state. Thus, the USCCB continues to oppose “unjust discrimination” against people with a homosexual inclination, but we cannot support a bill, like ENDA, that would legally affirm and specially protect any sexual conduct outside of marriage.

We are well aware that many persons and groups in our American society do not agree with this teaching. They have every right to make their argument and be heard with respect. Like every other group in our society, the Catholic Church enjoys the same rights to hold to its beliefs, organize itself around them, and argue for them in the public square. This is guaranteed by our Constitution. This includes the right to teach what it holds to be the truth concerning homosexual conduct—and to act as an employer consistent with that truth—without the threat of government sanction.

Because ENDA, if enacted, could be used to punish as discrimination what the Catholic Church teaches, the USCCB has always sought as comprehensive a religious exemption as is achievable, in order to protect the religious freedom of the Church, and of all others who hold similar views. One partial solution to this problem is to apply Title VII's prohibition on religious discrimination, which is already incorporated in the current version of the bill. But this is insufficient alone, as the Title VII protection covers only a subset of religious employers, and recent experience shows that even covered employers may face government retaliation for relying on such exemptions. Without such additional protection, ENDA would be applied to jeopardize our religious freedom to live our faith and moral tenets in today's society.

We are also concerned that ENDA may be invoked by federal courts to support the claim that, as a matter of federal constitutional right, marriage must be redefined to include two persons of the same sex. We have already seen state Supreme Courts repeatedly rely on state-level ENDAs as a basis for creating a state constitutional right to same-sex "marriage." For example, the highest courts of California, Connecticut, and Iowa have declared that the definition of marriage as the union of one man and one woman is "discriminatory" and lacking any "rational basis," based in part on the existence of ENDA-like laws in their respective states. Indeed, these rulings reflect a legal strategy that gay rights advocates have repeatedly and publicly explained in scholarly articles and other media—first, secure the passage of sexual orientation antidiscrimination laws, such as ENDA, and then invoke the principle embedded within those laws as a basis for same-sex "marriage." Particularly in the wake of *United States v. Windsor*, which is virtually certain to prompt additional federal constitutional challenges to the definition of marriage, the risk that ENDA could be invoked for similar purposes is simply too great. As leaders of the Catholic Church, we have a moral obligation to oppose any law that would be so likely to contribute to legal attempts to redefine marriage.

In addition to ENDA's protection of same-sex sexual conduct, its threat to religious liberty, and its contribution to marriage redefinition in law, there are other obstacles to its passage. The bill's treatment of "gender identity," which was not in some previous iterations of the bill, would have an adverse effect on privacy and associational rights of others. The bill also lacks an exemption for a "bona fide occupational qualification" (BFOQ), for those cases where it is neither unjust nor inappropriate to consider an applicant's sexual inclination.

While we must oppose ENDA for the above stated reasons, the Conference stands ready to work with leaders and all people of good will to end all forms of unjust discrimination, including against those who experience a homosexual inclination. We therefore invite further discussion with you and your staff on how such efforts might advance in a way that avoids the various concerns discussed in this letter.

Sincerely,

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Committee on Domestic Justice
and Human Development

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