



United States Conference of Catholic Bishops

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3000

WEBSITE: WWW.USCCB.ORG • FAX 202-541-3339

October 31, 2013

United States Senate
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 some of the serious concerns we have with this legislation and why we oppose it.

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. Furthermore, “work,” as Pope Francis recently said, “is fundamental to that dignity.” Thus the Catholic Church has consistently stood with workers in this country and continues to oppose unjust discrimination in the workplace. No one should be an object of scorn, hatred, or violence for any reason, including his or her sexual inclinations (see *Catechism of the Catholic Church* [CCC], no. 2358).

Our dignity as children of God extends to our sexuality. Being a male or a female is a reality which “is good and willed by God,” and this complementarity is essential for the great good of marriage as the union of one man and one woman (CCC, no. 369). Sexual acts outside of marriage serve neither these goods nor the good of the person and society as a whole.

Given these principles, the USCCB continues to promote the dignity of both work and marriage and to oppose unjust discrimination on any grounds, including those related to homosexual inclination or sexual identity. But we cannot support a bill, like ENDA, that does not justly advance the dignity of all workers and authentic non-discrimination, but instead:

- **Lacks a BFOQ exemption.** ENDA does not include 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 inclinations. This omission also elevates “sexual orientation” discrimination within Title VII to the same and, until now unique, level as race discrimination (which allows no BFOQ), and above religion, sex, and national origin discrimination (which do).
- **Lacks a status/conduct distinction.** ENDA’s vague definition of “sexual orientation” would encompass sexual conduct outside of marriage, thus legally affirming and specially protecting that conduct.
- **Supports marriage redefinition.** Based on experience in state courts, it is likely that ENDA would 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.

- **Rejects the biological basis of gender.** ENDA’s definition of “gender identity” lends force of law to a tendency to view “gender” as nothing more than a social construct or psychosocial reality, which a person may choose at variance from his or her biological sex. This provision also fails to account for the privacy interests of others, particularly in workplace contexts where they may reasonably expect only members of the same sex to be present.
- **Threatens religious liberty.** ENDA could be used to punish as discrimination what many religions – including the Catholic religion – teach, particularly moral teaching about same-sex sexual conduct. Moreover, the bill’s religious freedom protection, which is derived from Title VII, covers only a subset of religious employers, and as a result of recent litigation, is uncertain in scope. Recent experience also shows that even exempted employers may face government retaliation for relying on such exemptions.

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 same sex attraction. We are grateful to live in this country where every group enjoys the right to hold to its beliefs, organize itself around them, and argue for them in the public square in the service of the common good. We therefore invite further discussion with you and your staff on how we might move forward in a way that addresses the various concerns raised in this letter.

Sincerely,

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Most Reverend Stephen E. Blaire
Bishop of Stockton
Committee on Domestic Justice
and Human Development

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Most Reverend Salvatore J.
Cordileone
Archbishop of San Francisco
Subcommittee for the Promotion
and Defense of Marriage

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Most Reverend William E. Lori
Archbishop of Baltimore
Ad Hoc Committee for Religious
Liberty