United States Conference of Catholic Bishops

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February 6, 2020

Dear Representative,

Catholic social teaching speaks very clearly and strongly about the equality of men and women based upon their equal dignity as children of God. "In creating [humans] 'male and female,' God gives man and woman an equal personal dignity." (*Catechism of the Catholic Church,* no. 2334). The bishops' concern for just wages and the fair treatment of women goes back at least 100 years. In a February 12, 1919 statement entitled the *Bishops' Program of Social Reconstruction*, the bishops said that "women who are engaged at the same tasks of men should receive equal pay for equal amounts and qualities of work." Moreover, recent Popes like St. John Paul II and Francis have spoken powerfully about the need to do more to address unjust inequities between women and men, and we encourage you in seeking out constructive ways to address them.[1]

That being said, we are writing to you to express our concern with a number of consequences (intended or unintended) that will arise with the proposed Equal Rights Amendment ("ERA" or "amendment").

One consequence of the ERA would be the likely requirement of federal funding for abortions. At least two states have construed their own equal rights amendments, with language analogous to that of the federal ERA, to require government funding of abortion, see *New Mexico Right to Choose v. Johnson*, 975 P. 2d 841 (N.M. 1998), and *Doe v. Maher,* 515 A.2d 134 (Conn. Super. Ct. 1986). And arguments have been proffered that the federal ERA would have this effect as well as restrain the ability of the federal and state governments to enact other measures regulating abortion, such as third-trimester or partial birth abortion bans, parental consent, informed consent, conscience-related exemptions, and other provisions.

The problem of unintended consequences, however, is not limited to abortion. In the last several years, advocates have argued that laws forbidding sex discrimination also forbid discrimination based on "sexual orientation," "gender identity," and other categories. To take one example, it is argued that bans on sex discrimination set out in the Affordable Care Act and Title VII, respectively, require health care professionals to perform, and secular and religious employers to cover, transgender surgery. Just this term, the Supreme Court is hearing three cases for the purposes of determining the scope of the sex discrimination provisions of Title VII, and specifically whether sexual orientation and gender identity are protected classes under that law. Thus, the very meaning of "sex" discrimination has become a highly contested issue, a fact that heightens our concerns about a federal constitutional provision that, in broad fashion, purports to forbid the abridgement of rights based on sex. The consequences of how this is interpreted would impact how Americans must treat and speak about gender in public schools at every level, hospitals, government workplaces, social welfare agencies, and more.

The ERA could also have an impact on the ability of churches and other faith-based organizations to obtain and enforce conscience protections whenever there is a claimed conflict with the

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[1] *See, e.g.,* Pope St. John Paul, II, *Letter to Women* (June 29, 1995) (insisting on "real equality" between men and women in terms of "equal pay for equal work," fairness for working mothers, equality between spouses and parents, and the "recognition of everything that is part of the rights and duties of citizens in a democratic State") http://www.vatican.va/content/john-paul-ii/en/letters/1995/documents/hf_jp-ii_let_29061995_women.html; Pope Francis, General Audience (April 29, 2015) (calling for Christians to demand equal pay for women because the "disparity is an absolute disgrace!") http://www.vatican.va/content/francesco/en/audiences/2015/documents/papa-francesco_20150429_udienza-generale.html.

sexual nondiscrimination norms that the ERA would adopt. The ERA could likewise make it more difficult for faith-based organizations to compete on a level playing field with secular organizations in applying for and obtaining government funds to provide needed social services. For example, the government could argue that a decision not to perform an abortion or transgender surgery is sex discrimination, so that a health care provider is ineligible to receive federal funds if it declines to perform such a procedure.

Finally, if the ERA were intended to have a more *limited* scope, it is unclear why federal and state law, which *already* forbids sex discrimination in so many areas, is not already adequate to that task. Courts generally do not construe constitutional provisions to mean nothing or to add nothing to the law. Since the equal protection clause already subjects sex discrimination to a rigorous constitutional test, the ERA presumably is intended to do something more. And that "something more" is an opening for proponents to argue that that ERA has applications such as those described above. There is little question that the ERA would unleash a generation or more of litigation to determine its meaning.

In addition, there is a strong argument that the current amendment, as purported to have been ratified by a number of states, is "dead." Among the defects: (a) the amendment was not passed by the requisite number of states in the 7-year time frame that Congress prescribed for its ratification, (b) the prescribed deadline was subsequently extended by a mere majority (not a 2/3) vote in Congress, (c) some states rescinded their approval, and (d) the Supreme Court dismissed on mootness grounds an earlier case on the ERA following representations by the Acting Solicitor General that the amendment was no longer valid (because of either the time lapse or the rescission by some states, or both). On January 6, the U.S. Department of Justice's Office of Legal Counsel issued an opinion in which it concluded that, because the deadline for ratification has expired, the ERA is no longer pending before the States and that Congress in 2020 may not revive the deadline. Litigation has already been initiated to resolve questions over the ERA's current validity or invalidity. So, at best recent efforts to "revive" the amendment in the current Congress would be ineffective, at worst they will render the amendment susceptible to even further litigation simply to determine whether it was validly enacted.

For these reasons, we urge you to oppose the ERA in its current form and to vote "no" on H.J. Res. 79.

Sincerely,

Most Reverend Joseph F. Naumann
Archbishop of Kansas City, KS
Chairman, Committee on Pro-Life Activities

Most Reverend Paul S. Coakley Archbishop of Oklahoma City
Chairman, Committee on Domestic Justice and Human Development

Most Reverend David A. Konderla
Bishop of Tulsa
Chairman, Subcommittee for the Promotion and Defense of Marriage