



United States Conference of Catholic Bishops

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May 8, 2019

Dear House Judiciary Committee Member,

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 *Programs of Social Construction*, 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.”

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 possible consequence of the ERA would be the 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 providers to perform, and secular and religious employers to cover, transgender surgery. Just this term, the Supreme Court agreed to hear 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.

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). The ERA’s validity or invalidity, therefore, will also, ultimately, have to be decided by the courts. So, at best recent efforts to “revive” the amendment are a nullity, at worst they will render the amendment susceptible to protracted litigation simply to determine whether it was validly enacted.

For these reasons, we urge you to oppose the ERA in its current form.

Sincerely,

A handwritten signature in black ink, reading "Joseph F. Naumann".

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

A handwritten signature in black ink, reading "Frank J. Dewane".

Most Reverend Frank J. Dewane
Bishop of Venice
Chairman, Committee on Domestic Justice
and Human Development

A handwritten signature in blue ink, reading "James D. Conley".

Most Reverend James D. Conley
Bishop of Lincoln
Chairman, Subcommittee for the
Promotion and Defense of Marriage