

The following is the text of the letter sent to you on May 19, from the United States Conference of Catholic Bishops (USCCB), on the topic of the Employment Nondiscrimination Act (ENDA). The June 4, 2010 comments of Fortunate Families are inserted in italics).

**May 19, 2010**

Dear Member of Congress:

We write to you regarding the Employment Nondiscrimination Act (ENDA), H.R. 3017, and Senate (S. 1584). Our purpose is to outline the serious concerns we have with these bills in their current form and why we cannot maintain the position of neutrality we held in 2007.

For the sake of clarity, permit us first to state two basic tenets of Catholic Church teaching on this issue. First, persons with a homosexual inclination (*this word -"inclination" - is offensive to the LGBT community. Being homosexual is NOT an "inclination" but a God given sexual orientation. The use of the word "inclination" is a deliberate misdirection to imply "choice" rather than "orientation" as a natural sexual variation*) must be accepted with respect, compassion, and sensitivity, (*If our homosexual children are to be accepted with "respect, compassion, and sensitivity" then how can they be denied the same civil rights as their heterosexual brothers and sisters?*) and second "[u]nder no circumstances can [homosexual acts] be approved (*ENDA has nothing to do with sexual acts, and everything to do with sexual orientation, a deep-seated dimension of one's personality.*" [US Bishops Committee on Marriage and Family, "Always Our Children," 1997/98]."  
*Catechism of the Catholic Church ("CCC"), nos. 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. (*ENDA is designed to insure that our children's dignity is "acknowledged and respected"*) We recognize that no one should be an object of scorn, hatred, or violence for any reason, including sexual inclination. (*Arguing against ENDA is a form of violence against our children.*) The Church affords special concern and pastoral attention to those who experience a homosexual inclination and stands committed to avoid "[e]very sign of unjust

discrimination in their regard.” CCC, no. 2358. *(ENDA simply provides basic employment protection against workplace discrimination to **all** regardless one's sexual orientation or gender identity).*

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. (ENDA has nothing to do with sexual acts). The Catholic Church’s teaching cannot, therefore, be equated with “unjust discrimination,” because it is based on fundamental truths about the human person and personal conduct *(ENDA has nothing to do with personal conduct)*. Homosexual conduct is categorically closed to the transmission of life, and does not reflect or respect the personal complementarity of man and woman *(ENDA has nothing to do with the transmission of life, nor personal complementarity)*. 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 and homosexual conduct outside of marriage has no claim to special protection by the state. *(ENDA has nothing to do with sexual conduct of any kind.)*

Just as 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. *(ENDA specifically exempts religious organizations from its provisions.)*

The USCCB continues to oppose “unjust discrimination” against people with a homosexual inclination, but we cannot support a bill – such as ENDA in its current form – that would legally affirm and specially protect any sexual conduct outside of marriage. *(ENDA has nothing to do with sexual conduct)*

Moreover, because the passage of such a bill 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 *(ENDA specifically exempts religious organizations from its provisions.)* 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 does not cover all religious employers, and recent experience teaches that even covered institutions 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. (*ENDA specifically exempts religious organizations from its provisions*)

The movement to redefine marriage to include two persons of the same sex (a. k.a. same-sex "marriage") has changed the law substantially toward that end, at both the state and federal level, and it has become increasingly clear that laws like ENDA have been instrumental to those changes. (*ENDA has nothing to do with marriage of any kind.*)

For example, we have seen state Supreme Courts repeatedly rely on state-level ENDAs as a basis for creating a state constitutional right to same-sex "marriage." We consider it very likely that ENDA, despite referencing DOMA, could be used for similar purposes at the federal level. The highest courts of California, Connecticut, and Iowa have declared that the traditional definition of marriage is "discriminatory" and lacking any "rational basis," and so violates the constitutions of their respective states. (*None of these civil rulings required changes in religious organization's teachings or practices.*) Cases are now being brought in order to create a federal constitutional right to same-sex "marriage"—whether by striking down federal DOMA, or by striking down California's Proposition 8 in federal court. If ENDA were to pass, we would expect lawyers to invoke it in federal court under the federal constitution, just as they invoked analogous state laws in state constitutional litigation. (*ENDA has nothing to do with marriage of any kind*). If this strategy were to succeed, it would represent a legal and moral disaster comparable in many ways to *Roe v. Wade*. (*to say ENDA would lead to "a legal and moral disaster" comparable to abortion is beyond comprehension.*) As leaders of the Catholic Church, we have a moral obligation to oppose any law that would clearly contribute to this outcome. (*ENDA is not such a law; rather it's a law we have a moral obligation to support*)

These rulings also 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." *(No religious organization will ever be required, by any legal invoking of ENDA, to marry people of the same sex.)*

In addition to ENDA's protection of same-sex conduct *(ENDA has nothing to do with sexual activity)*, its threat to religious liberty *(ENDA exempts religious organizations from its provisions)*, and its contribution to the cause of same-sex "marriage," *(ENDA has nothing to do with marriage of any kind)* there are other obstacles to its passage. The bill's treatment of "gender identity," which was not in the 2007 bill, would have an adverse effect on privacy and associational rights of others *(there is no credible evidence to support this; gender identity is also about who one is, not what one does)*. 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 *(ENDA exempts religious organizations from its provisions)*.

While we regret we cannot support ENDA for the above stated reasons, the Conference would, however, be interested in discussing legislation that would protect persons with a homosexual inclination from unjust discrimination, without protecting homosexual conduct. *(ENDA has nothing to do with "protecting homosexual conduct." That's already protected per the Supreme Court's 2003 landmark decision in Lawrence vs. Texas)*. We therefore invite further discussion with you and your staff on how ENDA might be amended to correct the various flaws discussed in this letter.

*To close... here is a quote from an earlier USCCB (United States Catholic Conference at that time) document:*

***All in all, it is essential to recall one basic truth. God loves every person as a unique individual. Sexual identity helps to define the unique persons we are, and one component of our sexual identity is sexual orientation. Thus, our total personhood is more encompassing than sexual orientation. "Human beings see the appearances, but the Lord looks into the heart." [1 Sam 16:7] [Always Our Children (USCC, 1997/1998), p.7]***