



## ENDA: AN END RUN AROUND THE CONSTITUTION

### Part Two

Those who favor the Employment Non-Discrimination Act of 2007 (ENDA) portray it as merely an expansion of civil rights. However, according to J.Matt Barber of CWA, this legislation would actually violate the Civil Rights Act of 1964. ["Gay Conquest Spells the ENDA Reason" WorldNet Daily, September 18, 2007] He states that the bill "pits the government directly against religion, which is unconstitutional on its face. It would force employers to check their First Amendment guaranteed civil rights at the workplace door by not allowing them to consider sexual morality---in any way---while hiring or firing. It would make federal lawbreakers out of Christian, Jewish or Muslim business owners who honor their faith and would require that newfangled 'gay rights'---based entirely upon an individual's chosen sexual behaviors---trump an employer's enumerated constitutional rights."

### Religious Exemption?

Proponents of the bill claim that the bill contains a religious exemption, but that *could* only apply to pastors and churches themselves not para-church organizations. All faith-based organizations, even tax-exempt ones, could face discrimination under the present language of the bill. According to Barber, groups such as Christian schools, Christian camps, faith-based soup kitchens and Bible book stores would be forced by the government to adopt a view of human sexuality that conflicts with their faith. In light of the liberality of recent court decisions, it is conceivable that a judge could rule subjectively to determine who really qualifies for the exemption. Meanwhile, the burden of proof would fall on the faith-based organization, costing precious dollars that could be used in other more beneficial ways.

### Who is in the stall next door?

The bill also provides that "denial of access" to workplace facilities such as restroom and dressing rooms based on gender is only allowed for "shared shower or dressing facilities in which being seen fully unclothed is unavoidable." In other words, women would have to share the bathroom with transvestites, bi-sexual and trans-gendered persons. This, in essence, would force a hostile work environment on everyone else in order to meet these proposed governmental requirements.

### Soaring litigation

ENDA could open floodgates of litigation if approved by Congress. It would add changeable behaviors to governmental restrictions placed on employers. They would be put in the position of having to evaluate potential employees' "sexual orientation" or "gender identity" which could change from day to day. It would have the chilling effect of adding a governmental imprimatur on sexual behaviors that are at odds with Christianity, Judaism, and

Islam; this could have consequences that range from undermining marriage to approving a lifestyle that promotes unhealthy behavior. The expansion of federal power over the workplace could encourage the implementation of quotas and preferences based on sexual orientation.

### Sebelius invokes ENDA in Kansas

In Kansas, Governor Sebelius recently signed Executive Order 07-24 which states:

- "...the State of Kansas is dedicated to the principles of freedom and equality among all its citizens..."
- "...the State of Kansas employs individuals that are a vital part of creating and fostering efficient business practices and ensuring that all citizens of Kansas receive the support and services they need and to which they are entitled;
- "...the State of Kansas is committed to employment practices which will prevent discrimination and harassment on account of race, color, gender, *sexual orientation*, *gender identity*, religion, national origin, ancestry, age, military or veteran status, or disability status...."
- "...the State of Kansas is committed to recruit, select, develop and promote employees based on individual ability and job performance...."
- "...hiring and retaining diverse, highly qualified employees...."

"Now therefore, pursuant to the authority vested in me as Governor of the State of Kansas I hereby declare that all state entities under my jurisdiction shall make certain the following programs are in place:

- A diversity management program that includes outreach recruitment and hiring, support, mentoring, development, rewards and recognitions for achievement; as well as monitoring the effectiveness of such programs;
- A strong program prohibiting discrimination and harassment on account of race, color, gender, *sexual orientation*, *gender identity*, religions national origin, ancestry age, military or veteran status or disability status.. This program will include training and a prompt and confidential method for expressing complaints. [Emphasis Added]
- A program of awareness regarding legal protections for persons with disabilities...."

Governor Sebelius, with one stroke of the pen, invoked ENDA in the state of Kansas without legislative oversight. The signing of this order was barely reported in the news...only one small article in the Kansas City Star.

### ACTION:

**Call your representative at 202-225-3121 and urge him/her to oppose ENDA. The vote could take place soon!**