

TO: Judiciary Committee
FROM: Marion Miner, Associate Director of Pro-Life & Family Policy
Nebraska Catholic Conference
DATE: March 1, 2023
RE: LB169 (Sexual Orientation/Gender Identity Non-Discrimination) (Oppose)

The Nebraska Catholic Conference advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public. The Conference opposes LB169.

The Catholic faith recognizes the supreme dignity of every person as made in the image and likeness of God. The only appropriate response to this reality is charity. For this reason, the Catholic faith also recognizes that no one, including those who are experiencing same-sex attraction or conflict about gender identity, should be subject to unjust discrimination.¹ Every person should be treated with respect and dignity.

LB169 goes beyond protecting against unjust discrimination. It uses government coercion and punishment to force individuals, employers, small business owners, non-profit entities, and religious organizations, among others, to affirm conduct and messages that conflict with their sincerely held beliefs about marriage, human sexuality, and concerns for privacy. This has been the track record of sexual orientation/gender identity (or “SOGI”) laws everywhere—from cake bakers² to wedding photographers,³ flower shops,⁴ art studios,⁵ website designers,⁶ bookstores,⁷ and domestic violence shelters,⁸ to name just a few examples. Former Supreme Court Justice Anthony Kennedy said that a “traditional” view on marriage “long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world.”⁹ LB169 does not treat those with such views on marriage and sexuality as reasonable and sincere people, but instead as bad actors in need of corrective government coercion and punishment.

LB169 has several other issues worth briefly noting.

First, LB169 threatens the ability of an employer to carry out their business in accord with their mission. For example, it would prohibit a Christian bookstore owner from being able to hire or

¹ See *Catechism of the Catholic Church*, paragraphs 2357-2359.

² *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S.Ct. 1719 (2018); *Masterpiece Cakeshop, Inc. v. Elenis*, 445 Supp.3d 1226 (D. Colo. 2019).

³ *Telescope Media Group v. Lucero*, 936 F.3d 740 (8th Cir. 2019).

⁴ *State v. Arlene’s Flowers, Inc.*, 441 P.3d 1203 (Wash. 2016) (cert. denied, July 2, 2021).

⁵ *Brush & Nib Studios, LC v. City of Phoenix*, 247 Ariz. 269 (2019).

⁶ *303 Creative v. Elenis*, 6 F.4th 1160 (10th Cir. 2021) (cert. granted Feb. 22, 2022).

⁷ *Queen of Angels Catholic Bookstore v. City of Jacksonville*, No. 3:23-cv-00192, Feb. 2, 2023 (M.D. Fla.).

⁸ *Downtown Hope Center v. Municipality of Anchorage I*, 406 F.Supp.3d 776 (D. Alaska 2019); *Downtown Hope Center v. Municipality of Anchorage II*, 576 F.Supp.3d 636 (D. Alaska 2021).

⁹ *Obergefell v. Hodges*, 135 S.Ct. 2584, 2594 (2015).

conduct their business in accord with their faith-based mission. This is not idle speculation; the bookstore case cited above refers to a Catholic bookstore in Jacksonville, Florida, which just a few days ago filed a lawsuit to uphold its religious exercise and free speech rights against a local, similarly coercive SOGI non-discrimination policy.

Second, LB169 makes no attempt at ensuring religious liberty protections. It leaves in place a narrow exemption in the Fair Employment Practice Act allowing religious corporations, associations, or societies to hire individuals of the same religion “to perform work connected with ... its religious activities”.¹⁰ This provides no protection whatsoever to a church that wants all of its employees to uphold the mission of the church regardless of whether they are employed in a teaching or ministerial role. Just as importantly, it provides no protection to private business owners who in good conscience want their business, which is faith-based but not affiliated formally with any church, to run their businesses in accord with their mission—as in the Catholic bookstore example above.

Third, LB169 raises concerns for privacy. LB169’s reach extends to the “terms, conditions, or privileges of employment, because of the individual’s...gender identity.”¹¹ The terms, conditions, and privileges of employment include the use of multi-occupancy locker rooms, restrooms, and showers, among other facilities.

Fourth, LB169 would reach not only statewide employment law, but also local public accommodations law.¹² This would inevitably raise serious First Amendment issues as it has in many of the cases cited above.

The Nebraska Catholic Conference urges your opposition of LB169. Thank you for your time and consideration.

¹⁰ Neb. Rev. Stat. §48-1103.

¹¹ LB169, Sec. 9(1).

¹² LB169, Sec. 1.