

To: Judiciary Committee
From: Marion Miner, Associate Director for Pro-Life & Family Policy
Nebraska Catholic Conference
Subject: LR26CA (Strike marriage provision from Nebraska constitution) (Oppose)
Date: March 1, 2023

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 LR26CA, which proposes to strike language from the state constitution regarding marriage as between one man and one woman.

Article I, section 29 of our state constitution, enacted 23 years ago, does not define marriage but does declare something about what marriage is not; namely, a relationship of two persons of the same sex. In 2015, section 29 was rendered unenforceable by the U.S. Supreme Court's 5-4 decision in *Obergefell v. Hodges*. Justice Anthony Kennedy's majority opinion in that decision, and the larger conversation about what our public policy regarding marriage should be, shed light on the fact that our society has at least two conflicting understandings of what the institution of marriage is. One understanding of marriage holds that its primary purpose is the public recognition of a committed relationship between two adults for their fulfillment. Another, more deeply rooted understanding is that marriage is the social institution that unites a man and woman with each other and with any children born from their union.

This second definition is the one that has endured and been recognized, promoted, incentivized, and protected as an irreplaceable foundational support for any healthy society by states, cultures, and religions, each according to their own competencies, for millennia. Marriage's essential public purpose is to attach mothers and fathers to their children and to one another. If there were no need for these attachments—and our common experience illustrates there most assuredly is—then neither would there be any need for an institution that encourages and protects them. This is what marriage is and does. It is the only civil institution we have that serves that essential purpose.

Every child has a mother and a father. That fact has a significance that goes beyond biology. Marriage is *the institution* ordered toward protecting the right of children to know their parents and to be raised by them—those persons from whom they derive an irreplaceable part of their identity—except when an unavoidable tragedy prevents it. There are other benefits of marriage, and individual persons have unique private motivations for getting married, but marriage's essential public purpose remains the same. It exists to protect the legitimate rights of children which they cannot assert for themselves.

Section 29 may be unenforceable as a practical matter as long as *Obergefell* remains authoritative, but its repeal would signal that the state of Nebraska has abandoned the understanding of marriage as the singular institution for upholding the most basic natural right of children after the right to life itself. The Conference therefore respectfully urges you not to advance LR26CA to General File.