



Supplement to Testimony in Opposition to H.F. 726 (Bahner) (Gender equality provided under law, and constitutional amendment proposed)
State Government Finance and Elections
March 3, 2022

Chair Nelson and Members of the Committee,

The Minnesota Catholic Conference, the public policy voice of the Catholic bishops in Minnesota, writes to reinforce our opposition to H.F. 726 (Bahner). We enclose here, for reference, our prior testimony from February 1 in Judiciary Finance, but I also wish to add supplemental information regarding the lack of clear legislative intent regarding the scope of the term “gender” that will give rogue judges a blank check to invent novel forms of discrimination.

The proposed amendment states: “Equality under the law shall not be abridged or denied on account of gender”¹ During the Judiciary Finance hearing, when questioned about the intent of the amendment, the proponents were unable to answer simple questions, such as “what is the definition in statute of gender, what definition are we working with?”² The author, Rep. Bahner (34B), could not, herself, define what “gender” means.

Rep. Bahner deferred to the legal counsel of Gender Justice, Christy Hall, who noted that “there *obviously* is not, in this specific amendment, a definition of gender [. . .] but it is *understood* to be inclusive.”³ Gender Justice’s goal is to use the amendment to override religious freedom protections and judicially impose an expansive definition of gender discrimination that could likely not pass legislatively.⁴

House researcher Mary Mullen affirmed that gender and sex are both used throughout state statute, but are not typically defined, and that no definition of gender has been assigned to this amendment. In other words, by passing this bill, we will be asking voters to take a stance on an issue that is undefined, and essentially offers judges a blank check to impose their policy preferences as new forms of discrimination

Notably, the responses given signal that the proponents of the Equal Rights Amendment in Minnesota are no longer fighting for women, as once may have been the intention. Instead, they are trying to further entrench their radical gender ideology that erases women from the law. Contrary to Betty Friedan, being a woman is not a state of becoming that includes men posing as women.

The effects of H.F. 726 are numerous, as can be seen outlined in the enclosed testimony. We ask that you oppose this bill.

Respectfully submitted, Ms. Maggee Becker, Policy Associate

¹ Gender equality provided under law, and constitutional amendment proposed, H.F. 726, 92 Legislature, (2022). <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF726&ssn=0&y=2021>

² Gender equality provided under law, and constitutional amendment proposed: Hearing before MN House Judiciary Finance and Civil Law Committee, 92 Legislature (2022) (remote hearing, *accessed at* <https://www.house.leg.state.mn.us/hjvid/92/895211>).

³ Hearing: Gender equality provided under law, and constitutional amendment proposed.

⁴ See Christy Hall and Jess Braverman, “The Groundbreaking Minnesota Human Rights Act in Need of Renovation,” *Hennepin Lawyer*, available at <https://www.mnbar.org/hennepin-county-bar-association/resources/hennepin-lawyer/articles/2020/03/04/the-groundbreaking-minnesota-human-rights-act-in-need-of-renovation> (accessed Mar. 2, 2022).



Testimony in Opposition to H.F. 726 (Bahner) (Gender equality provided under law, and constitutional amendment proposed)
House Judiciary Finance and Civil Law Committee
February 1, 2022

Chair Becker-Finn and Members of the Committee,

We write to oppose a constitutional amendment aimed at establishing “gender equality.” Undoubtedly, proponents want to stop discrimination in all its forms. We share that goal because each person, regardless of biological sex or asserted gender identity, is made in the image and likeness of God.

This amendment, however, is unnecessary; it will undermine the well-being of women, further entrench abortion rights, lead to a host of unforeseen consequences, and be used as a sword against people of faith and others who recognize that human nature is not plastic. Biology is not bigotry, and not all distinctions are discrimination.

Sex and gender discrimination is already banned in state and federal law

The Minnesota Constitution commands that all persons must receive the equal protection of the laws. More specifically, the Minnesota Human Rights Act (MHRA) bans sex and gender discrimination (including sexual orientation), rendering this ballot measure redundant. Further, after the *Bostock* decision by the U.S. Supreme Court, federal civil rights law also forbids discrimination based on sexual orientation and gender identity in the employment context. And federal courts are already applying *Bostock* to other areas of the Civil Rights Act.

With both state and federal law already shielding people from gender-based discrimination, one wonders what the actual legislative intent is? It is important that the legislative intent is fleshed out during the consideration of the amendment, as future courts will have to figure out the contours of what sets of problems this amendment attempts to solve.

The amendment is not a shield against discrimination, but instead a sword against those who disagree

Unnecessary as a shield for some against discrimination, we are concerned that it will be used instead as a sword against people of faith and others who reject the concept of gender identity. The MHRA does not (quite reasonably) preclude all distinctions based on sex or gender. It further provides conscience protections and religious liberty for those persons and groups who make sex- and gender-based distinctions in education, employment, housing, and association. The MHRA thus represents a balancing of interests that were carefully crafted during the legislative process.

This amendment, however, gives judges a new tool to override both statutory and state constitutional protections for conscience and religious freedom when those come into conflict with new forms of gender equality. In particular, it will undermine the ability of religious non-profits, charities, and healthcare facilities to serve consistent with their views on sexual identity.

The ongoing rebellion against human nature by gender activists will likely lead to a host of unforeseen consequences

The amendment would empower judges to identify new forms of sex and gender discrimination, unthinkable even just five years ago. Here is just a short list of the possibilities: the mandatory mixing of the sexes in homeless shelters; gender-neutral restrooms and changing facilities in both public and private facilities; mandated state-funded assisted reproduction technology or surrogacy arrangements for transgender persons and same-sex couples; mandatory insurance coverage (public and private) for gender transition therapies; and the erosion of healthcare rights of conscience.

As with taxpayer funding of abortion, already mandated by our state Supreme Court to supposedly ensure equality for all women, taxpayers will foot the bill for these emerging mandates.

The triumph of gender identity is the real war on women

The irony of an amendment that protects gender equality is that it undermines the equality of the sexes, seen most plainly in the absurd spectacle of biological males dominating women's sports. The amorphous concept of gender swallows whole the matter of the equality of the sexes, not to mention the reality of sexual difference and the distinctions that are made because of those differences. Though there is an errant view of the sexes that depicts equality as sameness, thereby making women's equality dependent on their ability to behave like men, at least it recognizes the reality of the sexual binary. Gender identity, however, allows men to play women, and vice versa, undermining both women's equality and the dignity of the unique nature of women altogether.

The amendment will further constitutionalize abortion

Gender activists believe that the equality of all persons (regardless of gender identity) is dependent upon their ability to avoid responsibility of conception. In other words, in this view, so-called sexual independence/freedom is a cornerstone of equality, which again equates equality with the crudest vices of biological men—abandoning responsibility for the children that they father.

Fortunately, more and more people are waking up to the reality that the Sexual Revolution's treatment of women like men has not improved the well-being of women and has instead led to increased sexual exploitation, sadness, and the "Me too" phenomenon. Rather than further constitutionalizing the Sexual Revolution, we should be working in tandem with the federal level to return it to a matter of legislative deliberation where a more careful line-drawing between interests can occur.

For all these reasons, the Legislature should reject this that is a redundancy in combatting unjust discrimination and will empower judges to impose many unforeseen consequences. Thank you for your consideration.

Respectfully submitted, Ms. Maggee Becker, Policy Associate