

House Bill 176
Proponent Testimony
House – State Government Committee
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Chairman Gerberry, Ranking Member Daniels, members of the committee, thank you for the opportunity to appear before you today. My name is Lynne Bowman and I am the Executive Director of Equality Ohio, Ohio's statewide organization of people who support equality for lesbian, gay, bisexual and transgender people. On behalf of our over 25,000 person Ohio membership, straight and gay, I am pleased to speak to you and seek your support for House Bill 176, the Equal Housing and Employment Act. And Representatives Stewart, Sykes, Mallory, and Williams, thank you for your sponsorship of the bill.

Just yesterday morning, I came across a documentary from 1984 about Columbus City Council's first hearing and vote on adding sexual orientation to the city Human Rights Ordinance. Only 1 state and about 50 localities across the nation had such ordinances at that point. 1984. As I sat and watched the 30 minute program, I got that sinking feeling in the pit of my stomach. The arguments on the pro-equality side, and the messengers making those arguments, were nearly identical to what you'll hear today. And, unfortunately, the arguments against the ordinance, and those making the arguments, are likely very similar to what you will hear in opponent testimony. Let me repeat – this was in 1984. Twenty-five years ago...and yet here we are today – still discussing nondiscrimination protections for people based on sexual orientation and gender identity – a bill that is now seeing its fourth General Assembly. Are we really still living 25 years in the past on this issue?

As proponents of this legislation, we have been asked to limit testimony today. But please be aware, for each person who speaks – each message delivered – they are here on behalf of many other people who share the same message.

We are providing each of you with a book that includes written testimony from a few people across Ohio who originally planned on giving verbal testimony. In the second half of the book you will find reports, fact sheets, polling data and other resources. We've included information to answer your questions from last week about the Federal Employment Nondiscrimination Act as well as a Federal GAO study and a Williams' Institute Report about the impact on states that have included sexual orientation and / or gender identity in their laws. We hope you'll find these useful as you consider your support of this legislation.

So what does House Bill 176 do? Quite simply – it adds sexual orientation and gender identity to the classes protected in Ohio’s Civil Rights Code, ORC Sec. 4112. More importantly, it says to everyone who lives in Ohio – or who is *considering* living in Ohio – that Ohio does not discriminate, anywhere, for any reason, including sexual orientation and gender identity. This legislation establishes a standard of behavior, an expectation of conduct. Because ultimately, that is all any law truly does. Laws alone don’t protect us – you can’t stop someone from discriminating with just the written word - but rather, they give us recourse or establish punishment when the standard of conduct is violated; when harm occurs. Laws set parameters within which we are meant to live as a civilized society. Not discriminating against people in employment, housing and public accommodations purely because of their sexual orientation or gender identity is a standard Ohio should set.

Some people have concerns about adding more protected classes to our civil rights law. I would ask that you consider the words of Supreme Court Justice Kennedy writing for the majority in *Romer V Evans* when he said;

“Enumeration is the essential device used to make the duty not to discrimination concrete and to provide guidance for those who must comply.”

We believe it is time for the state of Ohio to make concrete a person’s duty not to discriminate on the basis of sexual orientation and gender identity. And as much as we would like to believe that people will just do this out of their common sense of decency towards one another, we know that is not true. We believe enumeration, the listing of classes, is the only way for the state to establish that standard.

Just as important as what this law does, is what the law doesn’t do. I’d like to take a few moments to address that.

First, let’s address quotas and affirmative action.

This bill does not mandate quotas. Indeed, Section 4112.05 expressly says that nothing in the Section can be construed to require quotas. The bill also does not mandate affirmative action programs based on sexual orientation or gender identity. There are a number of places in the statute that already require Affirmative Action programs – namely for ADAMH boards and County Boards of MR/DD (Sections 340.12 and 5126.07 respectively), but there are no current requirements for affirmative action in the private sector and this bill does not create any.

Now, how does this affect the Boy Scouts?

The U.S. Supreme Court has long made it clear the "freedom of association ... plainly presupposes a freedom not to associate." When organizations are found to be expressive associations -- that is, those formed to express a viewpoint or advance an idea -- the Court has stated that "[t]he forced inclusion of an unwanted person" can infringe on that important First Amendment freedom. There are, of course, limits to that freedom, but only in circumstances where "compelling state interests" are involved that are "unrelated to the suppression of ideas."

As recently as 2000, in a case involving the Boy Scouts of America, the Supreme Court looked at a New Jersey law similar to the one Equality Ohio is asking you to pass today, and held that the Boy Scouts could not be forced to accept James Dale, who was openly gay, as an assistant scoutmaster. Describing the values and aims of the Scouts, the Court concluded that "[i]t seems indisputable that an association that seeks to transmit such a system of values engages in expressive activity." The Court found that forced inclusion of Mr. Dale would "significantly affect" that activity, and that, accordingly, New Jersey's public accommodation law "runs afoul of the Scouts' freedom of expressive association."

The Equal Housing and Employment Act, House Bill 176, would be subject to those same restrictions, and, therefore, we believe concerns that have been raised about the Boy Scouts being forced to accept gay and lesbian leaders are unwarranted.

OK, so what about religious organizations?

Lines 1871 through 1882 of the bill address the religious exemption contained in this bill. In brief - nonprofit religious organizations, corporations or societies and institutions organized for educational purposes operated by such are allowed to continue to discriminate on the basis of sexual orientation and gender identity for the purposes of employment, association or membership, housing or use of facilities. Furthermore, this exemption holds for the secular business activities of the nonprofit as well – if conducting those activities is related to the religious and educational purposes for which the association, corporation or society is organized.

This is fairly wide latitude for faith organizations to continue to be discriminatory in their practices – something which is not granted for issues related to differing views on race, sex or even other religions.

What about the political threat related to supporting this bill?

If you look at the polling data we have provided in the book, including the cross-tabular information, you will note that across the state, regardless of media market, regardless of party affiliation and regardless of political ideology, this legislation is just NOT an issue for voters. Sure, it may be for a vocal minority – but the majority of Ohioans believe that enacting this law is the right thing to do...and the majority of people indicate it either wouldn't make a difference in how they vote on a legislator – or would make them MORE likely to support someone. Yes, MORE likely. For most of Ohio, this is simply a non-issue – some might even call it a no-brainer. For the people whose lives are affected by the lack of these protections everyday...that's not the case – and you have the power to do something about it. Federally, Republican Congressmen Pat Tiberi, Dave Hobson and Debra Pryce all voted in support of the similar Federal legislation in the last Congress – they knew it was the right thing to do.

What about the inclusion of gender identity and expression.

This is one of the more difficult concerns to address in the brief time I have. For those of us who have never lived with gender dysphoria (as classified in the DSM), and have never experienced this through a friend, family member or colleague, it may be hard to wrap our head around what someone who is transgender experiences daily. But just because we don't understand it, just because it is not part of our life experience, doesn't make it OK to say a person should lose their job, be denied housing, or removed from a public facility because of who they are. If we are given the opportunity to provide testimony again, we have prepared a number of people who can address this issue directly. But for today, I'll simply share that from the research we've done there have been no cases across the nation of a person "abusing" protections related to gender identity and expression. And of course, business owners may still have uniformly applied dress codes.

So what about how this impacts businesses?

Those who oppose this bill may tell you that it is bad for business. What I can tell you is that the largest *Fortune 500 Company* headquartered in Ohio, Cardinal Health, supports the passage of this bill and for the first time in their history, they are testifying before an Ohio legislative committee to show their support for a bill. The second largest private employer in Ohio, the Cleveland Clinic, also supports the passage of this bill. As do Nationwide Insurance, Huntington Bank, Limitedbrands and more. These companies, and 26 of Ohio's 28 Fortune 500 companies, join the 98% of *Fortune 500* companies who have similar policies. And it is not just large corporations supporting the bill. You'll hear from Cardinal Health about the actions of one group of small business owners...and the position they took when asked to support the legislation. In my experience businesses don't typically do

something that is counter to their business interests. They know this is the right thing to do for their business...and it is the right thing to do for Ohio.

Of course, those who oppose this bill may tell you that because so many companies already offer these protections in policy and so many local jurisdictions in Ohio already have similar laws, doing so at the state level is simply redundant. We believe basic protections shouldn't depend on where you live or for what company you work.

Granted, we're not talking about a huge number of cases. Based on a study conducted by the General Accounting Office of the United States, given the experience of other states, the Ohio Civil Rights Commission estimates that between 126 and 149 allegations of discrimination would be filed annually as a result of this new law, with only 25 – 30% of cases resulting in a finding of probable cause. While this may not appear to be a number significant enough to necessitate a change in our laws, for every person who loses their job because of their sexual orientation, the ability to finally seek redress without a lawsuit is very significant. Honestly, isn't even one case one too many.

You will certainly hear other reasons why you *shouldn't* pass this bill. The experiences of 20 other states and the District of Columbia, a large part of Ohio's business community, 16 local jurisdictions across Ohio, 11 of Ohio's 13 public 4-year universities, and the support of nearly three-fourths of Ohioans, show that the concerns you will hear are simply red herrings meant to convince you that Ohioans should be given permission by this legislature to continue to discriminate against people simply because of their sexual orientation or gender identity.

So let me close with that documentary I was talking about at the beginning. In 1984 at the Columbus City Council meeting, Council members listened to the same type of information you'll hear over the course of today and the next few weeks. I'm sure many of them felt the same struggle some of you may be feeling as you decide your position on this issue. The Hearing Room was full like it is today and they had constituents on both sides of the issue – as I'm sure many of you do. That evening, twenty-five years ago, the members of the Columbus City Council voted *against* protecting people based on sexual orientation. They made the wrong decision that first vote and after further study, they went back and corrected themselves a few years later.

Now, twenty-five years later, you have the opportunity to do what Council didn't do that first night. On behalf of the majority of Ohioans who support this legislation and on behalf of the many people who would be impacted by its passage, I implore you – vote yes on House Bill 176. It's simply the right thing to do for Ohio.