

TESTIMONY IN SUPPORT OF OHIO H.B. 160, THE OHIO FAIRNESS ACT

*Presented by Chad Eggspuehler to the Ohio House Committee on Government Accountability and Oversight
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Chairman Blessing III, Vice Chair Reineke, ranking member Clyde, and the members of the House Government Accountability and Oversight Committee, my name is Chad Eggspuehler. I'm an alumnus of the Ohio State University – Moritz College of Law, a former law clerk to federal judges in the District of New Jersey and Circuit Judge Deborah Cook here in the Sixth Circuit, and I'm currently in an appellate litigation practice with Tucker Ellis in Cleveland, Ohio.

I'm honored to be here today, in my individual capacity, to speak in favor of The Ohio Fairness Act. The other distinguished witnesses this morning highlight many of the reasons why the extension of basic, nondiscrimination protections to the LGBT community is imperative. It makes Ohio more competitive. It signals Ohio's open doors. It's not about "special rights," but equal access in the marketplace and the community. It's simply the right thing to do.

THE HISTORY OF DISCRIMINATION & THE NEED FOR LEGAL PROTECTION

It's high time for Ohio to join the 19 or so other states offering such nondiscrimination protections. Courtesy of data provided by the OCRC, no fewer than 106 complaints of LGBT discrimination were filed between 2004 and the end of 2017, with more than 40 of those complaints occurring since 2015. These claims involved workplace harassment, withheld pay, termination, and retaliatory discharge; assault and battery; ignored housing applications; abusive neighbors and nonresponsive landlords; even mistreatment by an EMS after a car accident.

Now, we have no way of knowing the relative merits of these claims, because there was no legal protection. The OCRC had no jurisdiction. Nor, however, do we know how many claims were never filed *because* there was no legal protection.

History teaches us, though, that discrimination against LGBT individuals is not a new phenomenon. If the trials of Oscar Wilde and Alan Turing, the Holocaust, the murder of Harvey Milk, and the government's failure to address the HIV/AIDS crisis seem like distant memories, the brutal murders of Matthew Shepard and Brandon Teena happened in the cable news era. Just last fall, Cleveland State University's campus endured a shocking poster campaign advising LGBT students to commit suicide—the Hangman's Noose encouraging them to "Follow [their] fellow Faggots" to their deaths. Sadly, that happens all too often, too, as the 2014 suicide of Cincinnati trans teenager Leelah Alcorn following forced conversion therapy reminded us.

Throughout these dark chapters, the law often stood silent in the face of discrimination. Indeed, for much of my life, the law expressly permitted it. In 1992, Colorado adopted a constitutional amendment forbidding the state and its cities from adopting *any* legal protections. As recent as 2003, when I was in college, Texas and a handful of other states still criminalized same-sex sexual intimacy. Hard to believe that, barely a generation ago, something as simple as date night could land you in jail? As a classmate asked during a debate about *Lawrence v. Texas*, "*what are they supposed to do, play Monopoly?*"

AN OPPORTUNITY FOR LEGISLATIVE LEADERSHIP

The law can and should do better. And in many ways, it has. The U.S. Supreme Court's decisions in *Romer*, *Lawrence*, *Windsor*, and *Obergefell*, the passage and repeal of Don't Ask, Don't Tell, and myriad developments around the country have advanced the equality and dignity of LGBT citizens and their families. I would be remiss to neglect the fact that marriage equality in this country owes much to the love stories of four Ohio couples and a fifth couple who adopted a child born in Ohio.

Yet, for all that the courts have done, some of the most meaningful developments have come from the legislative and executive bodies of cities and states around the country. Rather than disputing each issue piecemeal in court as adversaries, the legislative process can bring people together to solve an important community problem. The General Assembly has that opportunity here.

Structurally, the Ohio Fairness Act fits comfortably into the landscape of Ohio's nondiscrimination laws. It recognizes new protected classes within the existing statutory provisions, rather than requiring a new legal framework. Again, protected status does not mean "special rights"; it ensures *equal* access in the marketplace and in the community, no better, no worse.

Yet, beyond the meaningful and necessary legal protections, passing House Bill 160 would send a powerful message that discrimination against LGBT citizens is unacceptable in this state. An assurance that many vulnerable young people need to hear. A reminder that the letters *LGBT* refer not just to a discrete community, but to a worthy and co-equal part of the larger Ohio community.

SQUARING NONDISCRIMINATION PROTECTIONS WITH RELIGIOUS LIBERTY

This progress can be accomplished in harmony with religious liberty. No doubt, the people of Ohio hold—and deeply cherish—a variety of religious and moral beliefs. Our nation and our state have long protected the free exercise of religion while simultaneously avoiding establishments of religion. Importantly, House Bill 160 preserves the civil rights laws' existing protections for religious institutions. The bill does not seek to change people's religious, moral, and value opinions, or how they express those beliefs in the marketplace of ideas. But the marketplace of ideas is very different from the actual marketplace.

That's why Ohio's civil rights laws instruct that members of protected classes be accorded, as a baseline, an equal measure of dignity in the actual marketplace. That no person be excluded from a store or restaurant on account of gender, disability, or religion. That no person be fired from their job because of their age or disability. Adding LGBT citizens to these protections will not force anyone to abandon their conscience, religious practices, or beliefs any more than other civil rights' protections do. It has never been the policy of our country or our state that people must pass individual merchants' religious tests in order to be a member of the general community.

And should there be any question whether certain goods and services implicate First Amendment rights, the courts have shown that they are perfectly capable of fielding those disputes. Like many, I have closely followed the *Masterpiece Cakeshop* case at the U.S. Supreme Court; indeed, I have spent the last few months examining the issues in that case and offering my opinions in a blog series for Equality Ohio. I'm more than happy to answer any questions the Committee has about how those issues relate to House Bill 160.

But the mere possibility of a constitutional objection is no reason to do nothing. Each day that passes without nondiscrimination protections is a day that shop doors may close, bosses may fire, landlords may evict or deny applications, and lenders may deny credit for no other reason than someone's sexual orientation or gender identity, real or perceived. The existing data bear this out.

Ohio must do better! With your leadership, Ohio can put an end to the worst of these discriminatory practices that exclude LGBT citizens in all phases of their lives. And Ohio may live up to the promise of my alma mater:

Time and change will surely show

How firm thy friendship, O-HI-O.

I thank you for your time and your service to the State.

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