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G. MICHAEL PAYTON

**Before the House Government Accountability and Oversight Committee  
Proponent Testimony of Ohio Civil Rights Commission  
House Bill 160  
January 31, 2018**

**G. Michael Payton, Executive Director**

Chairman Blessing, Vice-Chair Reineke, Ranking Member Clyde and members of the Ohio House Government Accountability and Oversight Committee, on behalf of the Ohio Civil Rights Commission (OCRC), we thank you for allowing the agency this opportunity to share our thoughts on House Bill 160. The question before the General Assembly is whether discrimination against men and women with a different sexual orientation, gender identity or expression in places of employment, public accommodations, housing, and credit should be declared a violation of our state's civil rights law. The Ohio Civil Rights Commission ("OCRC") supports the passage of HB 160, and believes it is necessary to ensure equal opportunity and anti-harassment for all persons who live, work, play and conduct business in the great state of Ohio.

**Ohio Has a Strong Public Policy Against Discrimination**

The question of what is Ohio's general policy on discrimination has been asked and answered several times through history. The General Assembly and the citizens in the state of Ohio have consistently concluded that discrimination is unfair and unwanted because it violates fundamental values of equality and fairness. The root of Ohio's general policy against discrimination stems from a uniform desire to value and accept the contributions and talents of all individuals.

When the Ohio Civil Rights Act, R.C. Chapter 4112, was enacted approximately 59 years ago and subsequently amended to provide broader protections over time, the General Assembly set forth a standard value and expectation for how Ohio's citizens should be treated in places of employment, public accommodations, and housing. There is little doubt that civil rights laws have made us a better nation and state. Likewise, there is little doubt about the harmful effects discrimination on individuals and our state as a whole. Discriminatory acts preclude individuals from achieving their highest potential and from enjoying the fruits of the American Dream set forth in our Declaration of Independence, Constitution, and laws. Former Chair of the OCRC, Dr. Arthur L. Peterson, correctly stated in 1964 that, "(there) must be a strong commitment to and faithful execution of the anti-discrimination laws of Ohio...the beneficial results of these laws will speak for themselves." Dr. Peterson's prophetic words are as truthful today as they were in 1964.

The passage of modern civil rights laws (e.g., Ledbetter Act, ADA Amendments Act) by our leaders in the United States Congress, the issuance of state executive orders, affording protection to state employees on the basis of sexual orientation, and even the more recent amendment to the Ohio Civil Rights Act, which prohibited discrimination on account of "military status" by the Ohio General Assembly all demonstrate the continued commitment of our nation and state to equal opportunity and fairness.

Ohio's policy on discrimination was best articulated by former Ohio Supreme Court Justice Andy Douglas, who acknowledged "(t)he existence of a strong public policy against discrimination." He further stated that, "(t)ime and time again (the court has found)... there is no place in this state for any sort of discrimination no matter its size, shape, or form or in what clothes it may masquerade." Genaro v. Central Transport, Inc., (1999) 84 Ohio St. 3d 293.

The passage of HB 160 would therefore be consistent with Ohio's long-standing and strong public policy against discrimination. Passage of HB 160 would also send a strong and clear message that Ohio is a welcome place where all individuals can prosper.

### **The Passage of House Bill 160 is Necessary to Ensure Equal Opportunity and Fairness**

The OCRC is charged with the statutory task of studying the problems of discrimination in addition to enforcing Ohio's Civil Rights Act. Although it is no secret that individuals with a

different sexual orientation and/or gender identity or expression do not have protection from discrimination in Ohio, individuals still bring tearful stories of heartbreak, disappointment, unfair treatment, and even egregious harassment to the attention of the OCRC. The stories involve a variety of issues from the loss of a job or housing to harassing boorish behavior by others through words and conduct against persons with a different sexual orientation, gender identity or expression. Some acts are criminal hate crimes resulting in physical injury. At its core, such conduct robs individuals of their dignity and sense of self-worth having nothing whatsoever to do with their knowledge, skills, ability or diligence.

We have attached summaries of just a sample of discriminatory incidents brought to our attention and cases that we have been asked to investigate. Each story is but one example of the harm suffered by those with a different sexual orientation, gender identity or expression. Each exemplifies the underlying point behind HB 160 - that harmful discriminatory acts against persons with a different sexual orientation and/or gender identity or expression are indeed occurring in our state. The passage of HB 160 would begin to address this very serious problem as a means to address these forms of egregious discriminatory conduct.

### **The Passage of House Bill 160 Will Clarify and Standardize Existing Law**

The general public today is not well acquainted with the nuances of laws against discrimination due to sexual orientation, gender identity or expression. Many charging parties and respondents with whom we work are not even aware that the sexual orientation is not a protected class under state anti-discrimination laws. Depending on the facts of the case, a charging party may not be able to file a charge based on sexual orientation, but may still be able to file a charge of sex-based discrimination if the nature of the discriminatory treatment included gender stereotyping or sex harassment. This leads to an array of charges that OCRC may or may not be able to investigate in part or in total, making it difficult for citizens to understand their rights and difficult for employers to stay within or understand the law.

Protections against sexual orientation, gender identity or expression discrimination are rendered all the more confusing by the various policies enacted by Ohio employers, colleges and universities, as well as various ordinances, charters and orders enacted by state and local governments prohibiting discrimination on these lines. For example, the state of Ohio affords

protections to its employees and job applicants on the basis of sexual orientation. However, if that same employee chose to file with the OCRC, the agency would have no jurisdiction. Does it make sense that the same employee would have internal but no external protection? Similarly, municipalities are increasingly enacting ordinances or charters in a proactive attempt to protect citizens. However, every policy; every charter; every ordinance varies from the next, all having different limitations, penalties, and enforcement mechanisms. It is unclear, and frankly sometimes confusing, to ferret out what body enforces the provisions; what penalties may result from the conduct, and other similar issues.

House Bill 160 would provide the state with clear protections, enforcement, and punishment. This standard law would make it possible for organizations like OCRC to provide clear guidance and education for employers, business owners and housing providers to prevent discrimination. It will also clarify rights and remedies for all Ohio citizens, regardless of where they live or work or where the discrimination takes place.

### **The Passage of House Bill 160 Will Not Bestow “Special Rights” Upon Any Persons**

Some have said that granting legal protections against discrimination on account of sexual orientation, gender identity or expression will provide “special rights” or privileges. The passage of HB 160 will not bestow “special rights” or privileges upon any persons other the commonly accepted right to be free of harmful discrimination in places of employment, public accommodations, and housing. There is nothing “special” about recognizing and reiterating Ohio’s long-standing policy and values against discrimination. Rather than bestowing special rights or privileges, the passage of HB 160 would provide a level playing field so that all persons can enjoy the fruits of their labor. The granting of this right will not result in a detriment to others now, just as the granting of other civil rights protections down through time did not result in a detriment to them then. Every citizen in the State of Ohio might potentially avail themselves of Ohio’s civil rights protections at some point in their lives. For example, Ohio’s prohibition against race discrimination is applicable to all races – African-American, Caucasian, Latino, Asian and Native American. National origin and ancestry extend to all places of birth of ourselves and our ancestors. The prohibition against sex discrimination applies to both males and females. The prohibition against religious discrimination is inclusive of all religious beliefs, not just a select few, and

prohibitions against age discrimination benefits all citizens who are at least 40 years of age or older.

The provision of civil rights is not a zero-sum game. The granting of the basic right to be free from discrimination does not result in others being harmed. Citizens who are in need of protections against discrimination certainly do not consider themselves “special” just because our civil rights laws afford them equal opportunity and fairness.

For these reasons, House Bill 160 is the right legislation, for the right reasons, and at the right time. We therefore urge the General Assembly to pass this legislation.

Ohio Civil Rights Commission  
House Bill No. 160 – Proponent Testimony  
G. Michael Payton, Executive Director  
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Sexual Orientation, Gender Identity or Expression Scenarios - Attachment

1. Maitland v. Aveda

A male Jewish youth with feminine qualities was harassed by his instructors at a beauty school. He was informed publicly that “Jewish faggots” were not welcome and he was removed from the class. After several attempts, he was finally removed permanently from the class.

At the same institute, the only African American gay student was also harassed. When he took a leave for personal reasons he was denied re-entry though there were no discipline or performance issues on his record.

2. Schaffnit v. Fresh Vegetables

A lesbian and 10 year employee had served as Operations Manager with distinction. When a new Plant Manager was hired the lesbian was subjected to physical and verbal abuse based on her “different sexual orientation.” When she complained to the human resource department she was terminated three days later due to the “issues” that existed between her and the Plant Manager.

3. The Landlord Issue

A 40 year old female with death-bed health issues invited the gay son of a friend to stay with her during her convalescence. The landlord, upon meeting the gay youth, called him a “worthless faggot” and demanded that he leave the premises. When he didn’t leave, the landlord called the sheriff who threatened to arrest the youth for trespassing. The sheriff ignored the pleas of the distraught tenant that her friend’s son be permitted to stay with her.

4. Porter v. U.S. Express Enterprises

A male to female transgender applicant was subjected to harassment during a training program. She was asked about her sex, called a “He/She,” segregated from the other trainees, and told by the manager that he would be personally disgusted to share training space with her.

5. Auch v. Laurels of Defiance

Gay male with feminine qualities was told by the administrator of the facility to “dress like a man,” “stop being so emotional,” “you are unprofessional and prone to cry.” He was told that in any other job he would be thrown out in the street and threatened if he told anyone about the conversation.

6. Housing Harassment

A gay male couple faced harassment because the person they hired to work on remodeling their basement was teased by neighbors for working for gays. Shortly after completing the work and being paid, the young man began coming back to their house and harassing them about being gay. He ultimately dressed up in a KKK outfit and wielding a baseball bat, brought a cross on their yard and began to pound the bat on the doors and walls of the house.

7. Disparate Treatment Case

A lesbian employee was involved in an incident with two co-workers. Subsequently, the co-workers were suspended, but the lesbian was told to resign or be terminated. After being notified of the gender based charge of discrimination allegation, the employer made it clear that the charge was filed by a lesbian.

8. Brunner v. All-N-One Food & Fuel

A female employee was harassed by co-workers for not being "feminine." She was chastised for not wearing makeup, told to start acting like a girl, and advised by a male supervisor that he was going to bring the "bitch" out of her. Her hours were slashed and eventually she was terminated as her female coworkers were not comfortable working with her.

9. Terminated Because of Co-Worker's Religion

A female employee was harassed by co-workers for her perceived sexual orientation. A co-worker told management that she could not work with the female employee because of her perceived sexual orientation conflicted with the co-worker's religion. Shortly after the co-worker made the comment to management, the female employee was fired on the grounds of contributing to a hostile work environment.

10. Company Denied Service

A company that employed a transgender truck driver filed a charge of discrimination against another company because its driver was verbally attacked (called slurs) and refused assistance while trying to load equipment purchased from the second company. The truck driver asked for assistance to load the equipment, offering to pay if necessary, but was denied help due to the truck driver being a transgender person.

11. Landlord Harassment

A tenant was a transgender female residing in a single family home rental. When the landlord gained knowledge that the tenant was transgender, the landlord began changing terms of service (charging for water bills, when they were not part of the original lease) and denying repairs and receipts for paid rent. Landlord said that the tenant was crazy and he was going to get her out of the property.

12. Public Accommodation

This individual did not end up filing with us, however it is an apparent example of possible public accommodation discrimination. A gay man was asked to leave a Central Ohio Transit Authority (COTA) public bus while riding even though he was not doing anything inappropriate.

<http://www.10tv.com/article/man-says-cota-driver-kicked-him-bus-being-gay>