



Representative Nino Vitale  
Ohio House District 85

Sponsor Testimony on HB 36  
November 26, 2018

Good morning Chairman Bacon, Vice-Chair Dolan and Ranking Member Thomas. Thank you for the opportunity to speak on House Bill 36 titled the Ohio Pastor Protection Act. This is a short bill, just over a page, which does one thing: it protects pastors and church property from being forced to perform ceremonies that are against their religious beliefs. There is really nothing more to it than this. My reason for writing this bill is to stop a litigation war in Ohio. This language may sound a bit dramatic, but we live in an increasingly secular and pluralistic society where there are many belief systems. I believe Ohioans want to live in a state where ideas are proposed, not imposed on them.

One question everyone should ask is: don't we have religious freedom in the First Amendment and in our Ohio Constitution? Unfortunately, the answer is maybe. The reason I say maybe is based on the recent *Obergefell v. Hodges* court ruling from the summer of 2015 and comments written in the opinions by the Supreme Court Justices.

Chief Justice Roberts wrote: *"Unfortunately, people of faith can take no comfort in the treatment they receive from the majority today. The First Amendment guarantees, however, the freedom to "exercise" religion. Ominously, that is not a word the majority uses."*

Justice Clarence Thomas wrote: *"It appears all but inevitable that the two [homosexual rights and the exercise of religious freedom] will come into conflict, particularly as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples..."*

*...the majority's decision short-circuits that process, with potentially ruinous consequences for religious liberty."*

So how is this playing out?

New York Times Headline: *Christian churches 'must be made' to affirm homosexuality, Christian churches "must" be convinced, or coerced, to change their teachings on sexual morality.*

Measures and proposals affect churches directly. Municipalities such as Hutchinson, Kansas, and Jacksonville, Florida, have considered ordinances that would force churches that rent property to the public to allow same-sex marriages on that property.

A judge ruled that a Christian retreat house in Ocean Grove, New Jersey, must permit same-sex couples to perform ceremonies on its premises.\*

In New Jersey, a woman sued church property, a Christian hospital for citing religion as the reason the hospital refused to perform her transgender surgery and named the local pastor in the lawsuit. In looking up the hospital's location on a maps program, I found 8 other hospitals and outpatient facilities within 20 minutes of this location and over 45 facilities inside of 45 minutes.\*\*

Almost two months ago today in Ohio, on September 25th, 2018, the Cuyahoga County Council passed an ordinance 8-3 to protect individuals that identify as LGBTQA from actions/individuals that they consider to be a form of discrimination. This ordinance would provide equal access to housing, public accommodations, public bathrooms, employment and public locker rooms.

In addition to this, the ordinance creates an un-elected three-person board called the Cuyahoga County Commission on Human Rights. The purpose of this board is to be the means of enforcing penalties on individuals who have said that they have been discriminated against. If the board hears a complaint and thinks that discrimination has occurred, they can award attorney fees, level civil penalties and demand that individuals stop their discriminatory behavior.

I would like to read the definition of Public Accommodation as it is specifically defined in the Ohio Revised Code. Section 4112.01. section (9) It states, "Place of public accommodation" means any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public.

This definition is not only repeated but redefined and expanded in Section 1501.01 section X of the Cuyahoga County Code to include hotel, motel, public swimming pool, public sports facility, public sports arena, theme park, movie theatre, music arena, concert hall, performing art venue, and store.\*\*\*

I would now like to build a somewhat 'legal argument' based on these definitions. The first point would be the words in the ORC which states, any other place of public accommodation. The very nature of a worship facility is to be open to all and welcoming to all. I would like to ask, when is the last time anyone on this committee has been to a church where they asked for your membership card. Of the many churches I have attended, none have ever asked me for my Church ID before letting me in. As a place of public worship it is entirely possible that the regular function of a church could qualify as a place of "public accommodation." The ORC is using a word to define itself and has circular logic, which will have to then be interpreted by a judge. What exactly is the definition of public accommodation when the definition used are the words public accommodation? I argue that churches and church property are indeed places of public accommodation and are therefore subject to any and all public accommodation laws and must be open and available to all.

As I have learned, our legal services, LSC, will turn to the dictionary if a term is undefined or ambiguous in the code. According to dictionary.com, the definition #3 of public is "open to all persons", definition #6 is 'generally known, definition #7 "familiar to the public", #8, "open to the view of all, #9, "relating to all humankind." I would

argue that churches and church property, are often familiar, open to all, generally known and relate to all humankind.

Third, I would argue that the new definitions that Cuyahoga County is creating makes some churches and church property clearly open to public accommodation. The word 'store' is specifically added. I know many faith communities that have stores inside their churches or adjacent where they sell religious books and items. Might they be sued under this expanded definition?

Fourth, the words public sports facility and public sports arena are also used. I have noticed that the Catholic School in one community has allowed their sports facility to be used for non-Church events like AA meetings or recently, a graduation ceremony as the other school stadium was under construction. This too could be used as an argument to sue or fine a religious property for not allowing its facility to be used for an event against the faith community's religious beliefs.

Lastly, let us explore the words "music arena, concert hall or performing arts venue," as these too were added. I can tell you that just last week, my 15 year old who plays stand-up bass in the Springfield Youth Orchestra was accommodated and their group played in the Southgate Baptist Church in Springfield. The Youth Symphony is not affiliated with the Southgate Baptist Church nor the other churches they have been honored to play at. Based on this new definition, I think I could make an argument that this church is open to the public based on this new wording, or the existing wording in the ORC of 'amusement.' This church must open its doors to all because of public accommodation law, even though it may conflict with the church community's deeply held religious beliefs. Should the congregation and the people who support this faith community be forced to use their private facility for something against their religious beliefs? I can assure you, it was an amusing event and under the legal definition, amusement is specifically mentioned.

According to the Cuyahoga County Ordinance, the first fine is \$1000, the second is \$2500, and the third is \$5000. In every case the unelected three-person board can levy attorney fees on a religious community which could far exceed any of these penalties, even for a first time of alleged discrimination and could bankrupt the church. In many instances, it is not the actual fines that bankrupt the accused but the ongoing legal fees of defending themselves before any verdict is ever rendered.

No matter if you support someone's lifestyle or not, I do not think anyone, from a social group nor a religious group, should impose their will on someone else. I would just as easily stand here and fight against trying to force an Ohioan to go to a Catholic Mass or force participation in what are known as "Sword Drills." Sword Drills are popular in certain Protestant communities as a way to learn the books of the Bible.

We live in a pluralistic society, but I do believe this means we can live in harmony, even though viewpoints on life and morality may be very different. People of good will must find a way to live in harmony or we will tear the very fabric of our society apart. If we disagree with someone, are we going to turn to the heavy hand of the courts to work it out, or worse yet, the violence that we see in our own streets? If someone does not wish to perform a ceremony, I would hope we want to live in a state where all parties have basic respect for one another. I hope both parties would move on to find and work with people who will accommodate them without the use of governmental force, courts and fines.

I am looking to make Ohio a place where Ohioans propose their ideas, and do not impose them by courts, by laws or by violence. I in no way, want this bill to be seen as discrimination against any type of group, as I personally believe all men are created equal, and I do not believe in creating laws or carve outs in laws that favor one group over another for any reason. This bill is meant to be a shield, not a sword. All deserve equal justice and treatment, but I also believe we should want an Ohio that does not force people through courts, fines and threats, to require religious clergy or church property to be used in a way not aligned with their beliefs. I know many churches which have many diverse belief systems and feel people of all backgrounds can find clergy and property that will accommodate them no matter their desires.

While some may say that we don't need this law or it's redundant, I think it's clear from the facts mentioned above, that people who have been in and study the law for their entire lives see serious danger ahead. Let us avoid this danger in Ohio, and create an environment where we propose our ideas and do not impose them on others or minorities through the force of courts.

The Pew Research Center on Religion & Public Life states: for now, the most likely challenges for churches could arise in grayer areas of the law, such as rental of church basements or retreat camps owned by religious nonprofit groups.

*Similar legislation has already been signed into law with overwhelming bi-partisan support in Texas, Oklahoma, and Florida. It is currently in various stages in the states of Tennessee, Georgia, and Alabama.*

Many Ohio faith leaders and parishioners see rapid cultural and legal changes that point to looming threats to the free exercise of religion, despite First Amendment protections. I think the turnout of almost 65 pastors who came to testify on this bill in the last General Assembly and again in this GA, shows that the pastors of Ohio see a real threat. This new bill just makes it clear, in this time of uncertainty, that Ohio clergy and Ohio church property remain protected from these types of legal challenges and have religious liberty protected specifically by statute.

To that end, I have also attached a letter from the American Freedom Law Center. This is a group of expert attorneys who specialize in First Amendment issues and regularly argue cases before the Supreme Court of the United States. In summary, their letter states, "A way to blunt this judicial supremacy and its potentially adverse effects on religious adherents is for a legislature to provide statutory protection, as Congress did in 1993 by passing RFRA in response to Smith, and as the Ohio legislature is seeking to do here through the Ohio Pastor Protection Act. In summary, there are only good reasons for passing this important legislation and no legitimate basis for opposing it." Robert J Muise, Esq. Co-Founder & Senior Counsel.

State Rep. Celia Israel, a Democrat from Austin, Texas, said in a released statement that she believes it's possible to support both equality and religious liberty. "Texans are ready for equality, and if this measure gives pastors a peace of mind, I welcome it becoming law."

The freedom to worship and the free exercise of one's religious beliefs are the bedrock of our country's foundation. In fact, one of my favorite Founding Fathers, Patrick Henry stated, "*liberty is the direct end of government.*" For many, that liberty is played out in our ability to freely worship and practice religion without threat or force. Religious leaders in the State of Ohio must be absolutely secure in the knowledge that religious

freedom is beyond the reach of government coercion and courts imposing heavy fines, which could bankrupt a faith community just by the initial costs of having to defend their beliefs.

Another quote worth mentioning is from the leader of one of our two major political parties, who recently ran for the most powerful office in the world. Hillary Clinton stated...“deep-seated cultural codes, religious beliefs and structural biases have to be changed.”

I also give you this quote.... “If today I lived in a country where certain principles dear to the Christian Faith are suppressed, I would openly advocate disobeying that country’s anti-religious laws.” – *Letter from a Birmingham Jail* - Martin Luther King

In a rare move, the Ohio Catholic Conference of Bishops has written a public letter in support of this legislation. (attached)

Twenty-seven Ohio House members signed on in support of this bill as co-sponsors. 61 Ohio House Members, in a bi-partisan vote, voted “yea” on the floor, and by my count, it could have been as high as 65 had 4 supporters of the bill not been absent that day. The question to ask is: do you, honorable members of this committee, think religious communities with the church properties they occupy should be forced to do something against their religious beliefs or should Ohio’s faith communities be provided clear and concise freedom by you, its government? Will you protect religious liberty specifically by statute?

I will leave you with this sentence from Article 1, Section 7 of the Ohio Constitution which we all swore to uphold which states “,...it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship...”

I ask for your support and a yes vote and I am happy to answer any questions from the committee.

References:

\* <https://www.aclu-nj.org/news/2012/01/13/judge-rules-in-favor-of-same-sex-couple-in-discrimination-case>

\*\*<https://www.nj.com/passaic-county/index.ssf/2017/01/transgender-man-sues-catholic-hospital-in-paterson.html>

\*\*\* [http://council.cuyahogacounty.us/pdf\\_council/en-US/Pending%20Legislation/2018/O2018-0009B%20Enacting%20Code%20Section%20206-13%20Commission%20on%20Human%20Rights%20and%20Title%2015%20Anti-Discrimination%20\(002\).pdf](http://council.cuyahogacounty.us/pdf_council/en-US/Pending%20Legislation/2018/O2018-0009B%20Enacting%20Code%20Section%20206-13%20Commission%20on%20Human%20Rights%20and%20Title%2015%20Anti-Discrimination%20(002).pdf)



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January 18, 2017

Representative Nino Vitale  
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Re: Support for the Ohio Pastor Protection Act

Dear Representative Vitale:

I am writing today in support of the Ohio Pastor Protection Act. This bill is not only timely, it is much needed. Today, perhaps more than any other time in our nation's history, religious liberty is under attack. And it is under attack by those who seek to impose their political agenda upon people of faith.

Our Founders understood the importance of religious liberty by enshrining its protection in the First Amendment. Unfortunately, that protection was severely eroded by the U.S. Supreme Court in the 1990 decision of *Employment Division v. Smith*, 494 U.S. 872 (1990). In *Smith*, the Supreme Court held that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Id.* at 879 (quotations and citation omitted). This was viewed as a departure from the standard set forth in cases such as *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In response, in 1993 Congress enacted statutory protection, the Religious Freedom Restoration Act (RFRA), in an effort to restore the strict scrutiny test for claims arising under the Free Exercise Clause of the First Amendment.

As a result of the *Smith* decision, a person cannot bring a First Amendment free exercise challenge to a “neutral law of general applicability” even if that law imposes a substantial burden on the person’s religious exercise. As a consequence, *Smith* eviscerated the protections of the Free Exercise Clause. That is why, for example, Hobby Lobby’s successful challenge to the HHS mandate was decided under RFRA and not the First Amendment. See *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). However, RFRA only protects against burdens on religious liberty imposed by the federal government.

Presently, the Ohio Constitution still provides religious freedom protection against laws that burden religious exercise, regardless of whether these laws are neutral and generally applicable. In *Humphrey v. Lane*, 89 Ohio St. 3d 62; 728 N.E.2d 1039 (2000), the Ohio Supreme Court rejected the *Smith* approach to interpreting the Ohio Constitution’s protection of religious freedom. However, even under *Humphrey*, the religious adherent would lose if the challenger can show that the restriction on religious exercise furthers a compelling state interest and is the least restrictive means available of furthering that state interest. *Id.* at 69; 728 N.E.2d at 1045. In other words, there is no guarantee that the Ohio Constitution will provide the immunity from legal action that the Ohio Pastor Protection Act provides as a matter of statutory law.

Unfortunately, today, judicial activism in this area of the law is the norm and not the exception. See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (striking down, *inter alia*, Ohio’s law which provided that “[a] marriage may only be entered into by one man and one woman”); *see id.* 2612 (Roberts, C.J., dissenting) (“The majority’s decision is an act of will, not legal judgment. The right it announces has no basis in the Constitution or this Court’s precedent.”); *see also id.* at 2625 (Roberts, C.J., dissenting) (“Today’s decision . . . creates serious questions about religious liberty.”). A way to blunt this judicial supremacy and its potentially adverse effects on religious adherents is for a legislature to provide statutory protection, as Congress did in 1993 by passing RFRA in response to *Smith*, and as the Ohio legislature is seeking to do here through the Ohio Pastor Protection Act.

In summary, there are only *good* reasons for passing this important legislation and no legitimate basis for opposing it.

Sincerely,



Robert J. Muise, Esq.  
*Co-Founder & Senior Counsel*

# CATHOLIC CONFERENCE OF OHIO

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## **Testimony in Support of HB36**

February 21, 2017

Chairman Ginter, vice chair Conditt, ranking minority member Boyd, and members of the Committee. My name is Jim Tobin. I am an associate director with the Catholic Conference of Ohio. Our understanding of religious liberty is the fundamental basis for our support of HB 36.

As most of you know, the Catholic Church has a longstanding teaching on the sacredness of marriage, and specific requirements regarding the ceremony. While we will defend the premise that the recent Supreme Court decision did not change our ability to practice such teachings within our church structures, we feel it is important to have Ohio pursue legislation that provides the State with clarity and intent, lest there be uncertainties and legal challenges to this First Amendment Right.

During Pope Francis' recent visit to the United States, he stated:

“With countless other people of good will, [American Catholics] are concerned that efforts to build a just and wisely ordered society respect their deepest concerns and their right to religious liberty. That freedom remains one of America’s most precious possessions. And, as my brothers, the United States Bishops, have reminded us, all are called to be vigilant, precisely as good citizens, to preserve and defend that freedom from everything that would threaten or compromise it.”

We urge your support of HB 36.