**Testimony in Opposition to House Bill 36, the Ohio Pastor Protection Act**

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Chairman Bacon, Vice-Chair Dolan, Ranking Member Thomas, and members of the Committee, I thank you for the opportunity to submit written testimony regarding House Bill 36, the Ohio Pastor Protection Act, now before the committee. As an attorney and a concerned citizen of Ohio, I wish to express my strong opposition to this bill. Enacting this legislation would be an unnecessary, overbroad step that would do much more harm than good, despite the best intentions of its supporters.

Representative Vitale and several supporters of this legislation will tell you that this is necessary to provide pastors and other religious clergy with “peace of mind” that they will not be subjected to fines or other punishments from state or local officials if they refuse to perform marriage ceremonies that conflict with their sincerely held religious beliefs. It is clear that our society has been going through a significant shift in its attitudes toward several marginalized groups, including the LGBTQ community, and many of the changes that are hailed by some of us as victories for equality and tolerance are seen by others as threats to some of our society’s bedrock beliefs and to the convictions of deeply religious people. However, the First Amendment provides robust protection for pastors, ministers, and other religious persons from being forced or coerced into perform religious ceremonies that conflict with their beliefs and/or those of the church they represent. Simply re-stating these protections may make pastors feel better, but we have more than 200 years’ worth of case law and statutes that explicitly provide the protections sought by the authors of this bill.[[1]](#footnote-1)

The real harm in this legislation, however, comes from the provision dealing with public accommodations. The bill would make clear that “[n]o religious society is required to allow any building or property of the religious society to be used to host a marriage ceremony that does not conform to the religious society’s sincerely held religious beliefs.” According to Rep. Vitale’s testimony, this provision is necessary to ensure that churches are not subject to penalties for not making available their facilities as “places of public accommodation” under both the Ohio Civil Rights Act and the various county and municipal anti-discrimination ordinances that have been passed in recent years. Indeed, Rep. Vitale speculated that the open, public nature of houses of worship (most of whom are accepting of any and all visitors) could render them “places of public accommodation” under the statute. While this is a reasonable, common-sense argument, it is unsupported by judicial precedent. In fact, while Ohio courts have never directly confronted this question, numerous state and federal courts have clearly stated that churches should not be considered places of public accommodation, including the Second Circuit Court of Appeals, federal courts from Puerto Rico to Indiana, and state courts in New Jersey and Pennsylvania.

So, if churches are not typically considered places of public accommodation, what’s the harm this bill is trying to remedy? The plain text of the bill suggests that a church shouldn’t have to host a wedding ceremony that conflicts with its beliefs, full stop. While it seems clear that this is intended to “protect” churches from being required to host same-sex marriage ceremonies, the language is overly broad and opens up room for churches to discriminate against people on the basis of race, age, military service, or other qualities that have long been covered by the civil rights laws. It wasn’t that long ago that many Christian churches refused to perform weddings for mixed-race couples, basing their objections on religious grounds. Is that the world to which we wish to return in Ohio?

Rep. Vitale said that his reason for writing this bill was “to stop a litigation war in Ohio,” but given that the so-called “pastor protection” provisions are unnecessary, and the public-accommodation provisions are overbroad and open to lawsuits from any number of persons who could be discriminated against should this become law, I fear that just the opposite result might occur.

House Bill 36 is unnecessary, ill-conceived, and will end up doing more harm than good for all Ohioans, religious and non-religious alike.

1. Indeed, even a conservative stalwart organization like the Family Research Council is opposed to legislation like this, stating that, “If we currently focus on narrow laws that only protect pastors, other groups needing protections won’t get them, and conceding those protections will in the long run make pastors even more vulnerable.” *See* Travis Weber, “Why Pastor Protection Acts Are Unnecessary and Might Actually be Harmful,” *available at* https://www.frc.org/pastorprotectionact. [↑](#footnote-ref-1)