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*A Beacon of Hope in the Heart of the City*

**To:** Ohio Senate Judiciary Committee

**From:** Rev. Virginia Lohmann Bauman, Senior Pastor, St. John's United Church of Christ

**Date:** November 29, 2018

**Re:** House Bill 36 (Pastor Protection Act)

**To Chair Bacon, Vice-Chair Dolan, Ranking Minority Member Thomas, and members of the Senate Judiciary Committee,**

My name is Rev. Virginia Lohmann Bauman, Senior Pastor of St. John's United Church of Christ (Columbus), and I hereby present opponent testimony on House Bill 36.

There are compelling legal arguments based on the First Amendment of the United States Constitution and on Article One of the Ohio Constitution establishing why the so-called "Pastor Protection Act" is redundant and unnecessary. That alone should end consideration of this inquiry.

I used to practice law with a distinguished law firm across the street from our Statehouse. The Pastor Protection Act not only isn't needed, it sets a dangerous precedent for Ohio. More on that in a moment.

I was raised in the church. After I earned my law degree from Ohio State and practiced law here in Columbus, I earned my Masters of Divinity degree from the Methodist Theological School in Delaware, Ohio, and entered professional ministry. I am ordained both in the American Baptist Churches USA, and in the

United Church of Christ. I currently serve as the Senior Pastor of St. John's United Church of Christ in Columbus, Ohio. I am also a wife and a mother.

As ordained clergy in the State of Ohio, I am empowered to perform marriages that are in accord with the teachings of my church. This right includes the ability to choose **not** to perform a marriage that would violate church teachings in my determination. I can even refuse to marry any couple that I faithfully determine just isn't ready for the responsibilities of marriage and family life, with no interference, or additional "protection," from the State.

Just like the Catholic Church might refuse to marry a couple where one party has been divorced previously, even if a Protestant Church would not create that theological barrier to remarriage for the same couple. With no interference or additional "pastor protection" from the State, our individual Catholic and Protestant Churches have always had the right to determine who might be married – or not – within that particular church or faith tradition, even when we might vigorously disagree on theology as between our particular churches.

**We clergy have always had that right; it is protected by the religious freedoms so fundamental to our society that they are captured in the First Amendment of the United States Constitution and in Article One of Ohio's Constitution.**

**House Bill 36, this so-called "Pastor Protection Act" in fact protects *nothing* that is not already protected by federal and state constitutional law.** For example, many of our local Catholic Churches refuse to marry people who have been previously divorced, unless the prior marriage is annulled and various faith procedures are followed. So the local Catholic priest doesn't have to host a divorcee's wedding ceremony in their private church building or solemnize their vows if the marriage doesn't conform to the priest's sincerely held religious beliefs. The Catholic priest won't be subject to civil or criminal liability, nor have any state benefits withheld, for refusing to marry a divorcee. Today – with no interference from the State or additional "protection" from the State – that Catholic priest can refuse to conduct the marriage of a previously divorced person. Period. And that priest's right to refuse to marry previously divorced people, with impunity, is constitutionally protected by our federal and state constitutions.

Let me give you an even more stark example: in the Loving v. Virginia case, now featured in a national movie, the U.S. Supreme Court invalidated laws prohibiting inter-racial marriage. And yet for decades after that case was decided, and in fact, even today, racist pastors in their own churches refuse to marry, with impunity, inter-racial couples they deem unfit to be married in their church. And that right to officiate, or not, in the pastor's own house of worship, is constitutionally protected by our federal and state constitutions. Interestingly, at no time after the Loving decision did the Ohio Legislature find it necessary to "protect" pastors from being "forced" to marry inter-racial couples outside of that pastor's faith beliefs.

So given that this is the state of our law today, with no further action on your part, why are we arguing about the "Pastor Protection Act," House Bill 36?

Remember, the Church has often engaged in theological duels about who is "in" and who is "out" in our culture. In years past, people of color were excluded from many white churches based on certain Bible verses – and that still occurs today. Some churches allow only limited participation by women in their tradition, while other churches, like mine, call women to be ordained to live into the fullness of their God-given gifts in leadership in ministry. Today many churches rage over whether or not gays/lesbians may play a role in the faith community, and Protestant denominations have split over the issue.

And that's why we are arguing today over the "Pastor Protection Act."

Now, I can see that at first blush LGBTQ people are not specifically mentioned in the bill. But the sentiment is obvious. Because this Bill really isn't about providing additional "protection" for the Catholic priest who refuses to marry divorced people or for the racist pastor who refuses to marry inter-racial couples.

What House Bill 36 does do is this. It is a thinly veiled attempt to legitimize bigotry against our LGBT community in Ohio. It attempts to tell these brothers and sisters that they are less than other people in our State, and it alienates them from their neighbors.

I understand that other religious traditions may not agree with marrying same-gender couples or previously divorced people. Although I may not agree with them, I am proud to live in a nation that ALREADY protects this freedom of religious practice. Indeed, to suggest that today's Bill--a mere statute--could somehow provide or protect otherwise fundamental religious freedoms that undergird our nation undermines the sacredness of our First Amendment and Article One religious protections.

Just like the Catholic priest who is already protected from being compelled to marry previously divorced people, so too our local clergy and faith communities are already protected from being compelled to marry *any* couple (gay or straight) they deem to be unfit for marriage in their community. **There is not a clergy person today who is forced to marry a gay couple against their will.** Clergy don't have to host the gay couple in their private church building, and they won't be penalized in any way for that denial of religious benefits. Just like the Catholic priest who turns the divorcee away from the wedding chapel on theological grounds.

In reading the material previously submitted on this Bill, I saw that some clergy submitted testimony that is based on rumor and fear, not on law and fact. For example, it was rumored that a particular church insurer "might" drop a church's insurance coverage over concerns about litigation over gay marriages, which is false. The president of that same insurer (Southern Mutual Church Insurance) stated this was false, and continued: "Churches are not in jeopardy of losing their insurance coverage because of the belief they choose to practice."

So too, constitutional law professors have offered opinions after the Obergefell decision that "Ministers won't be forced to marry gay couples." (See e.g. [www.mlive.com](http://www.mlive.com) 6/29/15). **I urge this body to do its homework with our local constitutional law professors before enacting needless and harmful legislation.** No less than the Family Research Counsel issued a brief in March 2015 that opined that pastors and churches could not be forced to perform same-sex marriages because of the significant protection afforded to pastors and churches under the First Amendment.

As U.S. Supreme Court Justice Kennedy wrote in the majority opinion in the Obergefell case:

*Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. **The First Amendment ensures that religious organizations and persons are given proper protection** as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.*

Today, our Ohio legislature is being asked to legislate away the unfounded fears of a few clergy. To the best of my knowledge, **no major religious organization has signed on in support of the Pastor Protection Act.** This alone is telling. Where are the denominational leaders for the Catholic and Protestant denominations in support of this Pastor Protection Act? Where is the leadership for the Jewish traditions and the Muslim traditions? Where is the inter-faith leadership? This body should not undertake to legislate away the hypothetical fears of the populace it has been elected to govern, even if some of them are clergy.

Today, too many of our Ohio citizens in the LGBT community already face blatant discrimination and outright bigotry, even violence. Whether it is members of the LGBT community, or people of differing religious beliefs in a pluralist society – **Ohio doesn't need to discriminate to protect its pastors.** Instead, today let's resist the temptation to allow theological differences to rule the Statehouse.

In the words of Georgia Governor Nathan Deal, who vetoed a bill that would have supported discrimination against the LGBT community in Georgia,

*"I do not think that we have to discriminate against anyone to protect the faith-based community."*

The Pastor Protection Act would discriminate in the name of religion, and Ohio should have no part of that. Our task as Ohio citizens is to be in respectful relationship with our neighbors, even those with whom we vehemently disagree theologically. And your task as our elected officials is to model that respect for theological diversity by refusing to legitimize religious bigotry.

I respectfully urge you to oppose House Bill 36.