

TESTIMONY OF ROBERTA ANN KAPLAN IN SUPPORT OF HB369

Chair Hambley, Vice Chair Patton, ranking minority member Brown, and the members of the House Civil Justice Committee, my name is Roberta Ann Kaplan. I am currently the founding partner at Kaplan Hecker & Fink LLP, and an adjunct professor at Columbia Law School. I am also a graduate of Columbia Law School, and a member of the bars of New York, Massachusetts, and various federal courts, including the United States Supreme Court.

I am submitting this testimony in support of HB369.

In my many years as a litigator, I have worked tirelessly to combat discrimination against the LGBT community. Obviously, this cause matters to me on a very personal level. As a proud “Eema” (the Hebrew word for mother) of a son with two mothers, I very much hope that my son Jacob grows up in a country that rejects any form of discrimination because of who you love. But Ohio is also personal for me- it is where I grew up, and where my son visits his beloved Grandpa Richard and Grandma Bess each year.

Growing up in a tight-knit Jewish household in the suburbs of Cleveland, I was taught that each human being is made in the divine image, and that Jews are commanded to pursue justice, or ‘tzedek’, for all people. When I was a kid, my grandmother told me about driving into a small town late at night on her honeymoon with my grandfather in the late 1930’s only to find a sign at the check-in counter of the only hotel saying, “no Jews allowed.” My own experiences and the experiences of my clients have reminded me that we still have a long way to go in this country. In Ohio, today, there are many citizens who cannot openly be who they are out of fear of losing their jobs, homes, and even their children if their identities were exposed.

In 2013, I had the great privilege of representing the true American hero, Edie Windsor, before the Supreme Court of the United States. At the time, I was arguing against the Defense of Marriage Act, or DOMA, which discriminated against LGBT couples like Edie and her wife, Thea, by prohibiting their marriages from being legally recognized by the federal government, even while several states had already begun allowing those marriages. The court ruled that this form of discrimination was unconstitutional, and Justice Kennedy, writing for the majority, stated that creating separate legal standards for LGBT couples was wrong. To quote from his ruling, “DOMA undermines both the public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition. This places same-sex couples in an

unstable position of being in a second-tier marriage.”

I bring this up because in spite of that ruling, and in spite of all the progress that we as a nation have made since then, LGBT Ohioans find themselves to be, in the eyes of state law, second-tier citizens. Unlike their fellow citizens, they can still be denied access to a job, or an apartment, or a restaurant, simply because of who they are. Just like my grandparents in the 1930s when they were turned away from that hotel, it is still acceptable for LGBT Ohioans to be told that they do not belong here. In other words, the equal dignity of LGBT Buckeyes is not respected under the law in their own home state. This lack of respect for equal dignity has already been deemed to be unacceptable and unconstitutional. As Justice Kennedy stated in the Windsor decision, the creation of different marriage laws that applied only to LGBT people told "all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others. The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws sought to protect in personhood and dignity." Likewise, Ohio's refusal to provide LGBT citizens with the same legal protections enjoyed by other citizens serves no legitimate purpose. Instead, this refusal serves only to disparage and injure Ohioans across the state.

I am encouraged to see, however, that many of my fellow Ohioans believe that this has to change. Even back in 2013, when I argued Edie Windsor's case, polling showed that 79% of registered voters in Ohio supported banning discrimination against LGBT people in housing, employment, and public accommodations. That number seems to have only grown, with 25 Ohio cities now having passed ordinances that protect LGBT rights. And over 800 businesses and universities from all over the state, including some of Ohio's largest employers, have joined Ohio Business Competes to make the economic argument against discrimination and to urge passage of HB 369. They argue that Ohio can only attract the most talented employees by making it clear that anyone with drive and talent can succeed in Ohio, regardless of their gender, religion, the color of their skin, or who they love. History has already shown us how right they are. Edie, for example, was a mathematical prodigy who, in the 1950s, was one of the pioneers in the then-brand new field of software development. But in order to advance in her job at IBM, she had to hide her relationship with Thea, the love of her life. In fact, when Edie's co-workers noticed how often Thea called her at work, she was forced to pretend that she was dating Thea's brother, Willy. The only problem, of course, was that Willy wasn't real. He was a childhood doll of Thea's that they kept in a closet in their home. Despite Edie's talent, keeping her job required her to go to absurd lengths to conceal her true self. We must ensure that no one else, in Ohio or elsewhere, is forced to choose between their job and the people they love.

HB369 will allow us to do that. It will move Ohio in line with a fundamental truth that much of the rest of the country, including the Supreme Court, has already acknowledged: that LGBT people are just as deserving of dignity and respect as anyone else.

I wish to thank the Committee for hearing this testimony, and I would be happy to answer any questions.