

HOUSE BILL 369 (HILLYER/SKINDELL)--OHIO 'FAIRNESS' ACT

Opponent Testimony

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House Civil Justice Committee
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Chairman Hambley, vice Chairman Patton, ranking member Brown and members of the Civil Justice Committee, thank you for the opportunity to share concerns regarding House Bill 369, sponsored by Representatives Skindell and Hillyer. House Bill 369 seeks to institutionalize recognition, for purposes of anti-discrimination/civil rights laws, of the classifications of sexual orientation, gender identity and expression.

The bill would define “sexual orientation” to mean “actual or perceived heterosexuality, homosexuality or bisexuality” (ORC 4112.01(A)(24)). This wording generates a number of perplexing questions: How does one “perceive” a characteristic about a person that is assuredly based on actions rather than on biology? Wouldn't this give rise to exactly the “discrimination” the bill seeks to eradicate?

For purposes of employment especially, in what way exactly does one's private sexual practices rise to the level of how one does a job, or how a potential employer evaluates the person's resume and skills for the opening? Many Ohio employers will be on the horns of a significant dilemma: by federal law, a potential employer cannot ask such personal questions, but by this proposal, it is assumed that the employer “answers” the questions without asking, presumably in the manner most deleterious to the interests of the potential employee.

HB 369 would define “gender identity or expression” as the following: “means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, without regard to the individual's designated sex at birth” (ORC section 4112.01(A)(25)). Again, this begs more questions: What are “gender-related characteristics” and will the state provide a list of these in order to ensure that Ohio employers are informed on this? How will this affect company dress codes, etc? Would this force organizations (such as churches) to allow those with sexual dysphoria to enter bathrooms designated for specific genders, ie: female-identifying males in women's bathrooms?

Provisions in the bill also would strike homosexuality, bisexuality, transvestitism, transsexuality, and gender identity from the list of “sexual behavior disorders” in definitions under the bill. (ORC 4112.01(A)(16)(b)(i-ii). By this action, the ability of therapists, caregivers, etc. to address sexual disorders is significantly negatively impacted. Other disorders, including exhibitionism, voyeurism and pedophilia would not be considered “mental impairment” without “corresponding criminal behavior”. Does this open the door to potentially legalize pedophilia in the future? One has to seriously consider this possibility, as the next wave of calls for normalizing sexual license appear to be heading in this direction.

HB 369 expands provision in existing civil rights codes to those classes defined above under the umbrella of supremacy over laws to the contrary: “This chapter shall be construed liberally for the accomplishment of its purposes, and any law inconsistent with any provision of this chapter shall not apply.” It also adds a provision to specifically not limit actions being pursued under federal law. (ORC 4112.08). This raises further concerns: Would this provision trump the protections in other laws or initiatives such as the Pastor Protection Act , and would this open the door to take the conflict to a

Federal court to overturn the existing state protections? The answer is likely *yes*.

The bill would also add the above-defined classes in questions posed by the Ohio Civil Rights Commission in their survey tool to assess the prevalence of discrimination in the workplace and in housing (ORC 4112.04(A)(7)). Who would be surveyed? Ohio employers and property owners, or employees and tenants? This could be ripe for “setting the terms” by claiming “discrimination” where none exists, or in areas (such as church employment and housing) where there is a right to association with those who hold the same faith and religious tenets.

Even more troubling, the bill would require non-discrimination in hiring of *preschool staff* on the basis of the above classes defined in the bill, and would extend this to non-public schools with preschools (ORC 3301.53(A)(3)). With this provision, would schools have to hire cross-dressing staff to work with pre-school aged children? The answer again appears to be Yes. It is reasonable to believe that a large majority of parents of pre-school aged children will not be satisfied with that answer.

Another provision would require Civil Rights Commission to craft “education” for *every Ohio citizen* to “eliminate prejudice” and “identify the source”: “Prepare a comprehensive educational program, in cooperation with the department of education, for the students of the primary and secondary public schools of this state and for all other residents of this state that is designed to eliminate prejudice on the basis of race, color, religion, sex, military status, familial status, national origin, disability, age, or ancestry, sexual orientation, or gender identity or expression in this state, to further good will among those groups, and to emphasize the origin of prejudice against those groups and discrimination, its their harmful effects, and its their incompatibility with American principles of equality and fair play” (ORC 4112.04(A)(9)).

This creates a very significant question that legislators must answer: Where will the “origin of prejudice” in relation to sexual orientation and gender identity have its locus under this bill? Could it be with religion and the church, which doctrinally holds to the sinfulness of sexual perversion? It is not a far stretch to envision under this scenario that the church and religion would be deemed “incompatible with American principles of equality and fair play” for such doctrinal positions. Would that then initiate a push to eliminate religion as a protected class under civil rights laws?

As much as sponsors and supporters of HB 369 make of it as a supposed answer to these concerns, the true and sad fact is that the so-called “protection” for religious observance and practice supposedly a key part of this bill is not codified in the legislation. Instead, it is one line at the very end of the bill in the uncodified provisions which states: “This act upholds existing religious exemptions currently in Ohio law.” I draw your attention back to a previous point: Once the act goes into place, doesn’t the provision that “any law inconsistent with any provision of this chapter shall not apply” (ORC 4112.08) effectively negate this non-statutory declaration? It is undoubtedly so.

It is for these many reasons that this bill is clearly not good public policy, and as such should not be moved forward by the committee. Thank you for your kind attention to these comments, and I would be happy to respond to questions of the committee.