

Testimony HB 369

Representative Hambley and Committee,

Thank you for the opportunity to present today.

HB 369 is based on fairness. This testimony is given with regard to all citizens of the US, which includes Proponents and Opponents and in reference to fairness.

Parts of this bill are unfair to Proponents, parts of this bill are unfair to Opponents, and parts of this bill that are unfair to both.

I would like to address three areas:

Definitions

Shared bathrooms, showers and other related situations/facilities

Athletic competition

To the best of my ability, I have tried to present objectively the viewpoints of Proponents and Opponents in these areas and with facts from publications and other sources. I have interpreted this bill and documents in the context of fairness, as I would define it. I have submitted an Appendix, which is a more comprehensive Testimony.

DEFINITIONS

I believe that definitions of at least 17 words are essential to understanding and interpreting HB 369. Definitions need to be stated clearly and understood and interpreted the same way for people submitting, involved in, voting for, and affected by this bill.

Some of the 17 words: 1) have many meanings, some of which are contradictory; 2) include assumption(s) of one meaning among many possible meanings; 3) are vague, fluid, and/or elusive; 4) do not incorporate reasonable difference of opinion for the issues addressed in HB 369; 4) can be misinterpreted; 5) have no criteria for objective measurement by which they can be recognized consistently by others, and/or 6) when relevant, do not have standards to determine what is acceptable.

Only sexual orientation, gender identity and gender expression have been defined in HB 369 or the Revised Code.

1. Fair/Fairness
2. Sexual orientation
3. Gender/ Sex
4. Gender identity

5. Gender expression
6. Lesbian (L)
7. Gay (G)
8. Bisexual or (B)
9. Transgender (T)
10. Heterosexual / Straight (S)
11. Discriminate
12. Discrimination
13. Privacy
14. Civil Rights
15. Civil Liberties
16. Human Rights
17. Liberally

“shall be construed liberally for the accomplishment of its purposes”

In an accompanying document to this Testimony, I have submitted an Appendix of Definitions from publications and other sources of all 17 words.

Even though non-discrimination and fairness have not been defined, they could be defined and could be measurable. They represent behavior that I believe should demonstrate respect for all. Reasonable discrimination is not acceptable under our Constitution. Reasonable discrimination cannot infringe on liberties granted to all people of the US.

HB 369 and the Bill: Summary address eliminating prejudice. Prejudice is part of our thinking, feelings, beliefs, etc. One definition of prejudice is unreasonable feelings, opinions, or attitudes, especially of a hostile nature.

<https://www.google.com/search?q=prejudice+meaning&oq=Prejudice&aqs=chrome..69l67j0l68j69l70j35l71j72j33l73j34l74j35l75j36l76j37l77j38l79j40l41l42l43l44l45l46l47l48l49l50l51l52l53l54l55l56l57l58l59l60l61l62l63l64l65l66l67l68l69l70l71l72l73l74l75l76l77l78l79l80l81l82l83l84l85l86l87l88l89l90l91l92l93l94l95l96l97l98l99&sourceid=chrome&ie=UTF-8>

Eliminating unreasonable prejudice is not the same as eliminating all prejudice or specifically selected prejudice. In some instances, people can agree to disagree,

which is consistent with the foundational liberties of US citizens. Reasonable prejudice is not acceptable under our Constitution. Reasonable prejudice cannot infringe on liberties, thoughts and beliefs that are granted to all people of the US.

Eliminating prejudice in the schools is addressed in the Bill Analysis: Summary. Responsibilities of the OSBE include ensuring that school districts are responsive to the values, beliefs and priorities of their communities. There may be evidence related to Ohio Law, the Constitution and responsiveness related to communities that are not provided in documents with this bill. This evidence is required before considering this bill.

The Bill Analysis: Summary includes the phrases: may be construed, various unlawful discriminatory practices, etc. Within the context of HB 369 is the statement:

“shall be construed liberally for the accomplishment of its purposes”

Statements like this that are vague and easily misinterpreted should not be in any legal document.

While discrimination is not defined, it does include segregate or separate. These words are used as acceptable in numerous places in HB 369.

This bill does not meet acceptable standards for DEFINITIONS.

They are not fair to Proponents or Opponents or anyone else.

On the basis of this issue alone, I oppose HB 369.

SHARED BATHROOMS, SHOWERS AND OTHER RELATED SITUATIONS/FACILITIES

The Ohio Civil Rights Commission (OCRC) is addressed in the Bill Analysis: Summary as prohibiting various unlawful discriminatory practices. HB 369 proposes to add Sexual Orientation, Gender Identity and Gender Expression to the list of prohibited discriminations. Sexual orientation is defined in HB 369 as actual or perceived, heterosexuality homosexuality, or bisexuality. Line 1376 Privacy is acknowledged as a right in at least 4 places in HB 369. Privacy and modesty are civil rights and civil liberties. I refer you to the Appendix on Definitions for numerous definitions of Civil Rights and Civil Liberties. Inclusion of all of these civil rights and civil liberties must be internally consistent and mutually inconclusive in the OCRC.

Use of facilities as proposed in HB 369 results in the following:

Proponents

non-discrimination based on gender, gender identity, gender expression, and sexual orientation of people in the Proponent community, and

use of facilities where Proponents are comfortable.

Opponents

discrimination based on gender, gender identity, gender expression, and sexual orientation of heterosexuals;

use of facilities where Opponents are not comfortable, and

prevention of modesty and denial of the Civil Right and the Civil Liberty of privacy when using bathrooms, showers, and other situations/facilities.

Achieving reasonable Fairness for one group while denying reasonable Fairness for another group is not Fair. One group or the other is discriminated against with either passing or not passing this bill.

HB 369 does not include any recommendations that would meet acceptable standards of Fairness related to using bathrooms, showers, and related situations/facilities.

This bill does not meet acceptable standards of FAIRNESS in the use of BATHROOMS, SHOWERS AND OTHER RELATED SITUATIONS/FACILITIES.

On the basis of this issue alone, I oppose HB 369.

While I oppose this bill, I support revision and replacement of HB 369 to meet acceptable standards for fairness, as I would define it.

Some or all of these recommendations may have been considered; however, obstacles appeared to have been insurmountable. The following possibilities are presented for consideration or reconsideration.

- 1) Have a designated facility for: 1) biological males; 2) biological females; 3) and 4) as designated by the Proponents. Each facility has a toilet, sink and, if relevant, shower.
- 2) Modify all facilities to have a toilet, a sink and, if relevant, a shower. Each room has a door that opens to a main hallway and can be locked. All rooms can be used by anyone.

Use of facilities with either of these or other proposed solutions.

Proponents

non-discrimination based on gender, gender identity, gender expression, and sexual orientation of people in the Proponent community, and

use of facilities where Proponents feel most comfortable.

Opponents

non-discrimination based on gender, gender identity, gender expression, and sexual orientation of heterosexuals;

use of facilities where Opponents feel most comfortable, and

recognition of modesty and adherence to the Civil Right and the Civil Liberty of privacy.

I would support reordering funding priorities to make this happen. I believe that whatever it takes to provide these facilities is worth it to achieve Fairness.

ATHLETIC COMPETITION

I have distinguished two aspects of Athletic Competition.

Athletic competition refers to participation in an athletic event with people on the same or opposing team, and at the same time.

Athletic competitiveness refers to the ability to achieve success in athletic competition.

All information from publications and other sources that I found comparing athletic competitiveness of biological males and biological females after puberty was consistent in stating an advantage of biological males compared to biological females.

All information from publications and other sources that I found comparing athletic competitiveness of biological females and transgender females after puberty was consistent in stating an advantage of transgender females compared to biological females.

Fairness was addressed in many publications and sources relative to inclusiveness for transgender females.

Fairness was addressed in many publications and sources relative to inclusiveness for transgender females and an advantage in athletic competitiveness for transgender females over biological females.

There was no reference that biological females did not want to compete with transgender females due to their competitors being transgender females.

I found almost no information regarding wanting vs. requesting vs. being denied participation of transgender males in athletic competition with biological males.

The current paradigm is athletic competition based on biological males and biological females and results in the following:

Proponents

discrimination as presented by Proponents and related to exclusion based on gender, gender identity, gender expression, and sexual orientation of people in the Proponent community;

athletic competition with people with whom they do not identify;

at this time, no pathway for athletic competition for transgender females and transgender males with people, who have equal or the same range of athletic competitiveness,

use of bathrooms, showers, and other situations/facilities while participating in Athletic Competition and with people with whom they do not identify.

Opponents

non-discrimination based on gender, gender identity, gender expression, and sexual orientation of heterosexuals;

athletic competition with people with whom they do identify;

athletic competition for biological females, who have equal or the same range of athletic competitiveness;

athletic competition for biological males, who have equal or the same range of athletic competitiveness;

recognition of modesty and adherence to the Civil Right and the Civil Liberty of privacy, and

use of bathrooms, showers, and other situations/facilities while participating in Athletic Competition and with people with whom they do identify.

Athletic competition as proposed in HB 369 results in the following:

Proponents

non-discrimination based on gender, gender identity, gender expression, and sexual orientation of people in the Proponent community;

athletic competition with people with whom they do identify;

athletic competition for biological females with transgender females, who have an advantage in athletic competitiveness compared to biological females;

athletic competition for biological males with transgender males, who appear to have a disadvantage in athletic competitiveness compared to biological males;

non-compliance of the Civil Right and the Civil Liberty of privacy, and

use of bathrooms, showers, and other situations/facilities while participating in Athletic Competition and with people with whom they do identify.

Opponents

discrimination based on gender, gender identity, gender expression, and sexual orientation of heterosexuals;

athletic competition with people with whom they do not identify;

athletic competition for biological females with transgender females, who have an advantage in athletic competitiveness compared to biological females;

athletic competition for biological males with transgender males, who appear to have a disadvantage in athletic competitiveness compared to biological males;

prevention of modesty and denial of the Civil Right and the Civil Liberty of privacy, and

use of bathrooms, showers, and other situations/facilities while participating in Athletic Competition and with people with whom they do not identify.

This bill does not meet acceptable standards of Fairness for biological males and females or transgender males and females in ATHLETIC COMPETITION.

On the basis of this issue alone, I oppose HB 369.

While I oppose this bill, I support revision and replacement of HB 369 to meet acceptable standards for fairness, as I would define it.

A possible solution to revise and replace HB 369:

Establish four teams for each sport. The teams would be established based on: 1) biological males; 2) biological females; 3) transgender males, and 4) transgender females.

Athletic competition with the paradigm shift based on the establishment of four teams for each sport could result in the following:

Proponents

non-discrimination based on gender, gender identity, gender expression, and sexual orientation of people in the Proponent community;

athletic competition with people with whom they identify;

athletic competition with people, who have equal athletic competitiveness;

adherence to the Civil Right and Civil Liberty of privacy, and

use of bathrooms, showers, and other situations/facilities while participating in Athletic Competition and with people with whom they identify.

Opponents

non-discrimination based on gender, gender identity, gender expression, and sexual orientation of heterosexuals;

athletic competition with people with whom they identify;

athletic competition with people, who have equal athletic competitiveness;

recognition of modesty;

adherence to the Civil Right and Civil Liberty of privacy, and

use of bathrooms, showers, and other situations/facilities while participating in Athletic Competition and with people with whom they identify.

I would support reordering funding priorities to make this happen. I believe that whatever it takes to provide athletic competition as described above is worth it to achieve Fairness.

Thank you for your consideration of this Testimony.

Respectfully submitted,

Cheryl Riegger-Krugh PT, MS, ScD

November 18, 2020