

## Oliver W. Written Testimony for HB249

As a citizen I hold with me the rights of the United States of America. I hold Liberty; to be free within my society, with equal protections as everyone else. My testimony will review how HB249 is an unlawful interference of my civil and federal rights, as a physically cross-sexual transitioned person who enjoys performing arts.

My First amendment right, and I understand that within the law, is the right to practice my own beliefs; I have the right to speech, to press, to petition, and to assemble; within my culture or for social purposes. The first amendment federally protects all citizens in this way.

The Fourteenth Amendment states that "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This bill strips Queer people of Liberty, and it specifically oppresses trans people because of the overlap of their already existing physical gendered traits (physical cross-sexualism). Many Trans people's bodies already do not align with their biological sex. This bill targets those "markers".

I say this as respectfully as I can, the Trans Community is a common knowledge publicly recognized group of people in the United States. It is a group that is defined by their belief system and cultural dress, and in a lot of cases their physical gender traits (like natural facial hair, breasts, and cross-sexual features as an example). Trans people have their own medical class. Transgendered people are recognized around the world.

House Bill 249 sexualizes all clothing worn by a transgendered persons, and classifies “clothing” as a gendered “marker” under “Adult cabaret performance”, even clothes in the most modest styles. And I can prove this, let’s use me, a physically cross-sexual and transitioned individual, as an example. By this bill's definition and intent, the suit I am currently wearing is a marker for adult cabaret clothing. My suit “exhibits” a male “physical marker”. The common perception of people who wear suits are male. This bill would criminalize me for dancing to “the electric slide” in what I’m wearing today. It would criminalize me for singing or reciting Shakespere on a microphone. It is not truthful to say those actions are unsafe or indecent.

**This bill would make all gender-bending; all drag adult cabaret. That is wrong.**

Drag performances are not inherently sexual, yet the way this bill is written effectively treats them as if they are. There is a big portion of the drag world that is for fundraisers and public venues.

Stating that a woman can/can’t wear this and a man can/can’t wear that is targeting the men and women classes, who are currently protected under the 1st and 14th amendment. This bill violates all men and women’s rights.

As U.S. District Judge Thomas Parker pointed out when he blocked Tennessee's "anti-drag" bill because he deemed it unconstitutional. The Judge showed how the legislation would punish a drag performer for wearing a crop top and mini skirt from dancing, where minors might see it, while exempting a cheerleader performing the same dance in the same outfit.

The State of Ohio ALREADY has laws in place that protect minors in public. And these already existing regulations apply to all. Expanding upon existing laws that focus on conduct will help protect everyone and minors. All public event organizers that I have been a part of these past 14 years in the performing arts, follow the local and state laws very seriously.

Ohio already prohibits obscene performances and indecent exposure in public, especially where minors are present. My concern is that this bill does not simply clarify existing law. It creates new, identity-based definitions that specifically single out certain performers, even though existing law already covers obscene conduct. The problem here is not the absence of definitions. It is that the bill defines people into the law.

It impacts:

- First Amendment: freedom of expression and artistic performance
- Theater history includes cross-gender roles (Shakespeare example)
- Government should not decide which art or performances are acceptable
- Fourteenth Amendment: equal protection under the law
- Laws should regulate conduct, not identity or appearance
- Bill expands language from “private part” to “private area”
- Vague criminal definitions can be interpreted too broadly
- Definition of “adult cabaret performance” is unclear
- Bill lists performer categories but does not clearly define sexual conduct
- Oppresses trans people specifically because of the overlap of their already existing physical gendered traits (physical cross-sexualism). Many Trans people’s bodies already do not align with their biological sex.

**Mixing identity-based language with adult entertainment categories creates confusion and risks targeting a specific group rather than regulating conduct.**

Drag performances are not inherently sexual, yet the way this bill is written effectively treats them as if they are.

The bill defines performers as: “Performers or entertainers who exhibit a gender identity that is different from the performer's or

entertainer's biological sex using clothing, makeup, prosthetic or imitation genitals or breasts, or other physical markers.”

**Who ‘checks’ the genitals of a performer to determine if their clothes match their sex? That idea should scare all citizens. That idea alone is obscene.**

The question is: what does this definition have to do with protecting children from obscene conduct?

The bill also defines “biological sex” in detail, stating it means the biological indication of male or female based on chromosomes, hormones, gonads, and genitalia present at birth. Including such a definition in a criminal statute shifts the focus from regulating behavior to identifying a specific group of people.

**Laws designed to protect children should clearly target obscene or harmful conduct, not broadly describe identities or appearances.**

When legislation focuses on identity rather than conduct, it raises concerns about fairness, equal protection, and whether the law is narrowly tailored to address the problem it claims to solve. Something the 14<sup>th</sup> amendment protects: equal protection for all people, not people who fit into a specific definition.

Additionally, the bill restricts where artistic performances can occur, stating:

“No person, with knowledge of its character or content, shall recklessly engage in an adult cabaret performance in a location other than an adult cabaret.”

This raises concerns about the government limiting where artistic expression can take place. History shows us where that can lead. In the 1600s, England banned theater entirely, claiming performances were immoral. At the time, men regularly played women’s roles on stage. One of the playwrights from that era you might recognize...Shakespeare. That ban did not last, because governments should not have the power to decide which artistic expression is acceptable.

Let me point out that no one is arguing that drag shows should be held at schools, in fact; **the current laws we have prohibit that.**

The bill also says: "Division (B) (2) of this section shall not be construed to prohibit or restrict a bona fide film, theatrical, or other artistic endeavor or performance that is not obscene or harmful to juveniles."

That raises an important question: who decides what is "obscene" or "harmful to juveniles"? **Ohio already has obscenity and indecent exposure laws that address sexual conduct in public and protect minors.**

If those laws already exist, it is unclear what additional problem this bill is solving.

The bill further states: "If the performance involved is obscene... a violation of this section is a felony of the fifth degree."

That means a performance could potentially be treated as a felony based on a subjective determination of what someone considers obscene.

Criminal laws should be clear and narrowly written, especially when they involve artistic expression. When definitions are unclear, they risk sweeping protected speech and performances into criminal law.

Existing laws already prohibit sexual conduct in public where minors are present.

Key question: What problem does this bill solve that current law does not?

Similar laws have faced constitutional challenges in \*\*Tennessee ruled those laws were vague and overly broad and violated the constitution.

Tennessee – Adult Entertainment Act (2023)

Law name: Tennessee Adult Entertainment Act

Signed: March 2, 2023 by Governor Bill Lee

What the law did

The law banned “adult cabaret performances” in:

- public places, or
- anywhere minors could view them.
- It defined adult cabaret performances to include:
- topless dancers
- go-go dancers
- exotic dancers
- strippers
- male or female impersonators
- “similar entertainers.”

What happened in court

A federal judge blocked the law, ruling it unconstitutional because it was:

- Vague and overbroad
- Likely violated the First Amendment.
- Legislation would punish a drag performer for wearing a crop top and mini skirt from dancing, while exempting a cheerleader performing the same dance in the same outfit, where minors may see it.

Taxpayers pay the cost when unconstitutional laws are challenged like they did in these cases.

Ohio taxpayers don't need to foot another legal bill.

Rights should not be taken from one group to protect another, that violates the 14<sup>th</sup> amendment.

The Fourteenth Amendment guarantees equal protection under the law. Criminal laws should regulate conduct, **not who the performer is or how they present themselves**. When a statute singles out certain performers based on identity rather than behavior, it raises serious equal-protection concerns.

Laws should protect children without restricting constitutional freedoms and Ohio already has those laws. If the concern is obscene conduct, Ohio law already addresses that. Our state already prohibits obscene performances and indecent exposure in public, especially where minors are present.

If the current laws do not protect the children, I am most certain that everyone here would be willing to work with the committee on improving Ohio's existing conduct laws.

Rights in America are not a limited resource where one group must lose them so another group can feel protected. The Constitution protects everyone equally.

In my 14 long years as a drag artist, all public event organizers I've worked with follow the local and state laws very seriously. I do public fundraising and performers make adjustments depending on their audience.

Testimony End -