



## Planned Parenthood Advocates of Ohio

Chair Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and Members of the Ohio House Judiciary Committee,

My name is Danielle Firsich, and I am the Director of Public Policy for Planned Parenthood Advocates of Ohio and Planned Parenthood of Greater Ohio. I stand today in strong opposition to House Bill 249. This unnecessary bill perpetuates and encourages stigma and discrimination and implies that drag or gender nonconformance is inherently more sexual or obscene than any other form of public performance or personal expression. Ohio already has obscenity laws on the books that ban advertising, promoting, presenting or participating in an obscene public performance. With the purposeful inclusion of language regarding the public display of a gender identity *different from one's biological sex*, it has been made clear that the true target is precisely *who* is engaging in such displays—obscene or not—and what community at large they represent.

With this bill, you intentionally chose to single out drag performers, trans individuals, or gender nonconformance in general as somehow more indicative or demonstrative of sexual or obscene performance. That was a choice--a conscious and deliberate choice. According to a report released by SafeHome.org, "Ohio is one of the most unsafe states to live in as an LGBTQ+ American," and has the "sixth highest number of recorded hate crimes based on gender identity/sexual orientation."<sup>1</sup> It is not difficult to imagine this reality, as it is a reality often crafted by, encouraged and reinforced by the members of this very legislature. This isn't about obscenity. This isn't about "protecting children." This is yet another unnecessary and small-minded attempt to target the LGBTQ+ community and strip them from public spaces.

States have struggled to maintain active bans on public drag performances, as lower court rulings have blocked or overturned such laws after deeming them unconstitutional or unenforceable—most often after states have attempted to define drag as "adult entertainment," or prohibit performances in public and/or near children. Besides being a blatant attack on freedom of speech and freedom of expression, these laws create a chilling effect and heightened scrutiny of any displays of drag or gender nonconformance in public spaces. Very few are currently active as enforced "bans" in the way they were originally intended. Most laws have been restricted by courts due to First Amendment violations, and the legal status of these measures remains highly fluid due to widespread court injunctions:

- U.S. District Judge David Hittner, a Reagan appointee, ruled that the Texas law "impermissibly infringes on the First Amendment and chills free speech," and that while "not all people will like or condone certain performances, that alone does not strip First Amendment protection...as protecting speech that is indecent but not obscene."<sup>2</sup>

- U.S. District Judge Thomas Parker, a Trump appointee, wrote that the Tennessee law was both “unconstitutionally vague and substantially overbroad,” adding that the statute encouraged “discriminatory enforcement.” Parker also stated that while “the word ‘drag’ never appears in the text” of the law, “the Court cannot escape that ‘drag’ was the one common thread in all three specific examples of conduct that was considered ‘harmful to minors,’ in the legislative transcript.”<sup>3</sup>
- An Arkansas bill originally written to explicitly target drag had to be gutted to the point of being hardly recognizable after its sponsors admitted it would never survive a court challenge unless heavily amended.<sup>4</sup>
- In a 7-2 decision, The US Supreme Court itself halted enforcement of Florida’s anti-drag law after a district court ruled that it “likely violated the Constitution’s free speech and due process protections and that it was unconstitutionally vague.”<sup>5</sup>
- Another drag ban was struck down in Montana by a federal judge using the actual words of the bill’s author “to determine that the legislation was unmistakably crafted with discriminatory intent, constituting an unconstitutional breach of freedom of speech and imposing content-based restrictions.”<sup>6</sup>

Both Arkansas and Florida argued that their bill would “prevent the exposure of children to sexually explicit live performances” and “protect children from sexual content.” If this sounds familiar, it should--the language and subsequent justification could have been taken directly from this bill and its supporters. A similar legislative attempt in South Dakota resulted in experts noting that “largely backed by GOP lawmakers, bills affecting drag performances have often surfaced during election cycles, deployed to mobilize conservative voter bases.” Political gamesmanship is no excuse for flagrant disregard of constitutional rights. If HB249 is not, in fact, an attempt to designate all drag or gender nonconformance as “obscene,” then I suggest that, like the Arkansas bill, this legislature remove the language explicitly targeting performers or entertainers who display a gender identity that is different from their “biological sex,” defined as their sex “at birth, without regard to an individual’s psychological, chosen, or subjective experience of gender.”<sup>8</sup>

At a time when I was terrified to come out because of people just like those in this legislature, it was the queer and trans community, and more specifically, the drag queens, who made me feel that I belonged, that I was loved, and that I mattered. Over the last twenty years, I have performed with them, fundraised and advocated alongside them, seen my second eldest child perform with them, and argued the historical significance of drag as a sociopolitical art form in my Masters thesis published by Columbia University over a decade ago. There will never be a day that I turn my back on this community--most certainly not for a group of people determined to make us feel like second-class citizens and inherent dangers to minors and/or the public at large.

And finally, while we are on the topic of “obscenity,” let me conclude with the following—I find it obscene that children and families are struggling to afford their basic needs while we blow billions of dollars a day on an unconstitutional foreign war. I find it obscene that Ohioans cannot afford basic healthcare as we drop bombs on Iranian elementary schools, participating in the murder of over 170 innocent children. I find it obscene that Ohio is once again making headlines because of our connection to the largest known child sex trafficking operation in modern American history, with members of this very committee receiving donations from identified co-conspirators like Les

Wexner. I find it obscene that this body has the audacity to debate “indecent public exposure” when a member of this supermajority just regained his committee privileges after previously having them stripped because of accusations of sexual misconduct with a minor family member. And I find it obscene that our elected officials reserve more moral outrage for the public appearance of a drag queen and its imaginary threat to our kids than they do for the literal murder, trafficking, and widespread abuse of children that is right before their eyes.

I strongly urge this committee to vote no on House Bill 249. Thank you for your time and attention, and I will now take any questions you may have.

<sup>1</sup> <https://www.dispatch.com/story/news/2024/06/05/ohio-ranked-4th-most-unsafe-state-for-lgbtq-people-due-to-hate-crimes-and-legislation-report-says/73920967007/>

<sup>2</sup> <https://www.nbcnews.com/nbc-out/out-politics-and-policy/federal-judge-declares-texas-drag-law-unconstitutional-rcna117486>

<sup>3</sup> <https://www.pbs.org/newshour/politics/federal-judge-rules-tennessees-anti-drag-law-unconstitutionally-vague>

<sup>4</sup> <https://arkansasadvocate.com/2023/02/03/gutted-arkansas-bill-no-longer-targets-drag-performers-or-lgbtq-community-activists-say/>

<sup>5</sup> <https://www.cnn.com/2023/11/16/politics/supreme-court-rules-against-florida-anti-drag-law/index.html>

<sup>6</sup> <https://www.erininthemorning.com/p/judge-blocks-montana-drag-ban-using>

<sup>7</sup> <https://stateline.org/2024/04/01/as-drag-shows-go-mainstream-some-red-states-look-to-restrict-them/>

<sup>8</sup> <https://arkansasadvocate.com/briefs/bill-that-initially-targeted-drag-shows-becomes-arkansas-law/>