

OHIO SENATE
JUDICIARY COMMITTEE
Testimony in Support of S.B. No. 11
a.k.a. The Ohio Fairness Act
by
Eric Resnick
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Committee Chair Eklund, Vice Chair Manning, Ranking Member Thomas and members, I am privileged to be with you today sharing testimony in support of S. B. No. 11, the Ohio Fairness Act, which will assure that Ohio law reflects the American aspiration of equality in employment and housing opportunity and public accommodations.

If Ohioans really believe that lesbian, gay, bisexual, transgender and all other gender and sexual minorities are to be protected from discrimination because of who we are and who we love, it is time to make it the law and make it count.

I know many of you on this committee. In my former life as a staff reporter for the now defunct *Gay People's Chronicle*, I covered some of you. In my current role as a member of the Canton City School District Board of Education, I work on issues of public education with some of you.

I am 55 years old. I will always have the distinction of being the first openly gay elected official in Stark County. I own my house. I have been a fierce advocate for others, and I can be for myself.. I am privileged in our culture as a white cisgender male, and my personal needs are very modest at this time. When I get older and need to move into housing for seniors, that might change, as it is currently perfectly legal to discriminate on the basis of sexual orientation for housing in Ohio.

I say that as a reminder to all of us, but I am really here to talk about people whose life experiences have not equipped them with what I have.

I am here for my gay nephew, who is 20, and should be able to start his post-college life in Ohio without fear of discrimination, should he so choose.

I am here for my constituents, the LGBTQ Canton City School District students and the LGBTQ Canton City School District employees who protect and nurture them and add so much positive energy to the culture and climate of our schools.

Canton City Schools are safe places for LGBTQ people – students, employees, and families – and we have even had to recently prove it – a

test we, as a district, passed, when an openly gay student was verbally assaulted by a now former employee.

Canton City School District is as it is because of policy and tradition, and because I had predecessors who stood up and did the right thing. In the Canton City School District “all” students means **all** students.

Like in every other school district in Ohio, it is **policy, not law** that protects LGBTQ students and employees. And by the way, a school district that cannot protect its LGBTQ employees cannot protect its LGBTQ students.

Lack of law means that for LGBTQ public school students and employees, how you are treated depends on whether or not you are in a school district that cares enough to protect you, and I have to tell you, what you really already know – there are too many that don’t.

While the number of Ohio public school districts with LGBTQ-affirming policies grows yearly, and the Ohio School Boards Association continues to educate board members as to the importance of policies protecting LGBTQ students and employees, the barrier to universality is lack of action by the Ohio general assembly, and you can put a period on that sentence.

Let me explain.

In 1996 there was a landmark U.S. Supreme Court case captioned *Romer v. Evans*. The case was the first major victory for gay rights in the U.S. Supreme Court, and its primary holding is that a state cannot discriminate against a class of its citizens because of animus toward that class of people. (Yes, it took the U.S. Supreme Court until 1996 to come to that conclusion.) It was a 6-3 decision.

Justice Anthony Kennedy wrote the majority opinion in *Romer*, declaring, “*If the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.*”

Then Justice Kennedy put the responsibility for guaranteeing equality on legislative bodies, as protections for classes of people have been incorporated throughout American history.

Justice Kennedy wrote:

“*Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply.*”

The Ohio Fairness Act is nothing more than the inclusion of LGBTQ people under the scheme of Ohio's constitutionally protected rights, through **enumeration**.

Justice Kennedy was clear. If Ohio values its LGBTQ citizens, it is not enough to just say so. You must enumerate the protections in law, otherwise, it's not enforceable. So, will you just say you like LGBTQ people and believe we should not be discriminated against, or will you show us you really mean it by making the Ohio Fairness Act Ohio law?

Let me circle back around school districts, because that's a world I frequent these days.

The Ohio School Boards Association guides policy formation for school districts, and I, with colleagues, have been working for years behind the scenes to try to get OSBA model policies to enumerate protection for LGBTQ students and employees in all aspects of school life and in protection from bullying. Shouldn't be a big deal in 2019, right?

Well, for some districts, including ones who want to do it, it can be.

The reason is, attorneys, whose obligation is risk reduction, frequently counsel school districts **not** to enumerate protection for any suspect classes beyond federal and Ohio law. They advise districts that they will be exposed if they go beyond the minimums.

I always counter that is only the case if your intent is to discriminate, but because I sit in that seat, I understand the apprehension of my colleagues to defy their district counsel.

In 2012 the Canton City School District got one of those legal opinions, and it took some courage for board members to ignore it.

My point here is, absent your action, that is where we are. That's where Ohio's school districts are. That's where Ohio's LGBTQ students and their teachers, counselors and principals are.

Their protection is optional, and takes a high level of legal understanding and some courage for those who are charged with protection to actually do it.

It takes conviction for private employers to do it, and for public accommodations to commit to it.

I am saying it is long past time that the Ohio general assembly stand with those who stand for equality under the law by simply making it the law.

Rise to the responsibility Justice Kennedy gave to you. To fail to do so only makes LGBTQ people in Ohio second class citizens – an unpopular group discriminated against by your inaction.

All of Ohio deserves better.

I welcome your questions.



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