EQUALITY OHIO

Thank you to Committee Chair Ginter, Ranking Minority Leader Boyd, and the entire committee for the opportunity to be heard this afternoon.

Rep. Vitale and I agree more than we disagree. Clergy should be able to marry—and not marry—anyone according to the tenants of their faith.

That is a non-negotiable position that Rep. Vitale and I share. I believe strongly in the separation of Church and State.

Where we disagree is over what HB 36 does and whether or not it is needed.

To the extent that the bill claims to protect pastors from marrying people they do not wish to marry, HB 36 is unnecessary because clergy can marry or decline to marry anyone they want to *right now*. For example, I grew up Catholic. Catholics refuse to marry someone who is divorced unless the marriage is annulled by the Church. That is a belief upon which they are entitled to act.

Some religions prohibit people of different religions to marry or prohibit marriages if cohabitation happened prior to that marriage. Clergy have these rights under the First Amendment of our United States Constitution and Article I of Ohio's Constitution.

In their testimony in support of HB36, clergy were asked by this Committee whether they have heard of anybody who has been sued in order to marry a same-sex couple. None have.

To be very clear, there are no lawsuits being threatened against clergy, nor are any pending.

So, again, to the extent that the bill claims to protect pastors from marrying people they do not wish to marry, HB36 essentially restates existing protections that clergy have now.

Where this bill enters dangerous territory is the wide latitude it gives to "religious societies," which is not defined.

Religious entities play many roles in our state. Catholic Charities and Salvation Army, for example, provide a host of social services, crisis intervention, temporary housing, after school programs, and even food assistance. Many receive state and federal funding to do so, and are obligated to serve everybody equally in these programs.

Religious entities, therefore, are not always simply "houses of worship;" they also include entities that engage in commerce—by operating conference centers, reception halls, engaging in equipment rental, and much more.

When you operate a business and are open to the public, you must be open to everyone in the public. You are obligated to adhere to civil rights norms in the United States.

The sad irony here is that LGBTQ people are not presently included in Ohio's nondiscrimination laws, so generally, it's already legal to discriminate against them. But as written, this provision of HB36 would seemingly perpetuate discrimination against same-sex couples seeking to marry in commercial spaces *and also* allow for discrimination against many other protected classes under current law with regard to marriage ceremonies.

That's a problem, and in fact, taking that step here is likely to result in lawsuits by those impacted.

I believe Rep. Vitale and I could get to a place of agreement on what spaces are a sanctuary and what spaces are public facing.

More than once this committee has heard a tension that churches want to be inclusive of everybody, but do not want to be forced to do something that is against the tenets of their belief.

This is where we get into this idea of public accommodations—which is not new, and was not created with the *Smith* decision. Public accommodations were defined at the federal in the Civil Rights Act of 1964. It's what the lunch counter protests were about: if you're open for business, you're open for business to everyone. Period.

Places of worship—the sanctuary, the temple, the synagogue, the mosque—all have memberships and parishes. They are not open "for rent." This is different than if a religious organization is running a business--that is still a business that is subject to the public accommodations laws.

Rep. Vitale references *Bernstein et al v. Ocean Grove Camp Meeting Association* (OAL DKT. NO. CRT 6145-09.). In that case, a boardwalk pavilion was generally open and available to the public to rent for parties, ceremonies, and events. It was open to everyone equally: groups were only turned away due to scheduling conflicts. Then, the Ocean Grove Camp Meeting Association who owned the property turned away a same-sex couple seeking to have their commitment ceremony hosted at the center because of its Methodist tradition. That prompted a lawsuit, and it was held that the property was subject to the same New Jersey nondiscrimination protections that all other businesses open to the public were held.

To be clear, that boardwalk pavilion is not a church. It's a getaway, an activity center, a place where you hold the company retreat. For all intents and purposes, it was a commercial enterprise that happened to be owned by a Methodist-affiliated organization. If a church—a place of explicit gathering and worship—received a similar lawsuit, I would share in Rep. Vitale's shock. But not in this case.

Here's the crux: you can't have it both ways. You can't offer something commercially and open to the public for a fee and only offer it to some people. A sanctuary, a place of worship, is different than a business. It is not my position that houses of worship must be forced to open their doors for same-sex weddings. It is my position that businesses operated by religious entities must adhere to the same rules as every other business.

And that is why the lack of a clear definition of "religious society" gives me pause, in particular because of the other case that Rep. Vitale pointed to in his testimony in support of this act: a transgender man who is suing a Catholic hospital that is denying to perform a medically-necessary procedure simply because he is transgender.

Rep. Vitale testified that there were 8 other hospitals and outpatient facilities in the area, but I assure you, a hysterectomy is not an outpatient procedure.

I'm also unclear why this case is relevant to HB36 here. No marriage ceremony was at play in that case. If the intention of this act is to create a right for hospitals to deny medically-necessary care, then this act is far from a benign reassurance to the faith community, but a real danger, that as an attorney, I can only imagine playing out in the courts for years to come.

I'd like to leave you with this.

Jim Obergefell and John Arthur are Ohioans, and went all way to the Supreme Court to win the freedom to marry. Jim did, at least. John was there in spirit and memory.

Their story captured the heart of the country. John, suffering from a terminal condition, was unable to make the road trip to Maryland (where it was legal) to marry Jim before he died. The final stages of ALS are brutal.

Through friends, they acquired donations to afford medical-grade air transport. For his wedding day, Jim wore red. John, a tartan-patterned button-up.

They got married on a Baltimore runway and flew back to Cincinnati. John died a short time later.

Now, same-sex marriage is legal. They could have simply married in John's hospital room.

That is, unless it was a Catholic hospital, and unless a bill like this prevented it.

Thank you.