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(STATE EMPLOYEE RETIREMENT SYSTEM)

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MAY 17 2022

Independent Regulatory
Review Commission

May 12th, 2022

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17103

Dear Commission Members:

I write in support of proposed Regulation #52-13 Protected Classes Under the PHRA and PFEOA to define the terms “sex,” “race” and “religious creed.” While I am supportive of the proposed regulation as a whole, I will limit my comments to a strong endorsement of codifying the definition of “sex” as it is currently used by the Pennsylvania Human Relations Commission.

Discrimination protections enjoy broad popular and political support

Efforts to ensure LGBTQ individuals receive protection from discrimination have long ceased to be controversial. Even during this time of exaggerated polarization, protections such as those that would be secured by this regulation have broad support from the public, the business community and from elected leaders.

Polls continue to show nondiscrimination protections are overwhelmingly supported by Pennsylvanians.¹ Our residents simply do not want their neighbors to lose their jobs or housing because they are a member of the LGBTQ community. The entirety of the Northeast United States corridor protects LGBTQ residents from discrimination, and a coalition of over 500 businesses support federal legislation to apply nondiscrimination protections.² In fact, some municipalities have taken steps to provide these protections on their own, creating a patchwork of ordinances that provide civil rights protections by zip code.³

In the General Assembly, bills to protect LGBTQ people from discrimination have received co-sponsorship signatories (a strong indicator of legislative enthusiasm) from a majority of members of the legislature.

Proposal simply codifies existing implementation of the Human Relations Act

In 2018, the Pennsylvania Human Relations Commission issued guidance interpreting “sex” to include sexual orientation and gender identity.⁴ A landmark U.S. Supreme Court decision in June 2020 ruled the federal Civil Rights Act provides protection against discrimination based on sexual orientation and gender identity in the workplace. Currently, 21 states provide protections in law and over 35% of Pennsylvania residents live in an area with local nondiscrimination ordinances.⁵⁶

Not only are opponents to this regulatory change significant outliers, but their primary argument against the language – that it would be used to unfairly harm small businesses or religious institutions – has been proven untrue.

A review of the most recent complaints filed before the Pennsylvania Human Relations Commission found that of 3,660 total cases, only 36, or 1 percent, related to sexual orientation. Even fewer, 6, were complaints based on gender identity. That’s of a total of 851 complaints based on the category of discrimination based on “sex.”

For comparison, the PHRC received 33 complaints based on religious discrimination related to Christianity. In the areas of Housing, Employment, Public Accommodation and Education, discrimination based on disability, race/color and retaliation were the primary causes of complaint. Only in employment did sex discrimination, which would include LGBTQ individuals, rise to the top three.⁷ While these protections are incredibly important, implementing them has not appeared to cause any crisis, including for small businesses or religious organizations.

Regulation retains religious protections

The appropriate definition of “sex” under the Pennsylvania Human Relations Act in no way diminishes existing religious rights or protections for individuals of faith. In fact, the regulation makes explicit that protections in employment, housing and accommodations based on religion include both religious observance and practice, as well as sincerely held moral or ethical beliefs.

The ability for religious organizations or individuals acting as institutions in the marketplace – whether as an employer, educator or landlord – is addressed, as noted in the Pennsylvania Religious Protection Act, which provides the opportunity for adjudication of competing rights claims. This structure maintains existing protections of private rights for individuals and institutional rights.

In summation, Pennsylvania individuals with a sexual orientation identification or representation that may not align with the expectations of their employers, landlords or others in public accommodations deserve full discriminatory protections based on sex that has been provided for both by the federal Supreme Court and in existing practice in Pennsylvania. I’m grateful for the PHRC for promulgating these regulations to codify this definition.

Very Truly Yours,



State Representative Dan Frankel
23rd Legislative District