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May 9, 2022

VIA EMAIL (RA-HRREGSCOMMENT@pa.gov)

Re: Regulation No. 52-013

To Whom It May Concern:

On behalf of ADL (the Anti-Defamation League), I am pleased to express our support for the creation of a new Subchapter D in 16 Pa. Code Chapter 41, *Preliminary Definitions*, in order to bring clarity to the terms sex, race and religious creed as used in Pennsylvania's Human Relations Act (PHRA) and Pennsylvania's Fair Educational Opportunities Act (PFEOA). Neither the PHRA nor the PFEOA define these terms, and the proposed regulations provide much-needed clarity and guidance to ensure that these protected identity characteristics are interpreted consistently across laws that prohibit discrimination in employment, housing, commercial property, public accommodations and educational institutions across Pennsylvania.

As a preliminary matter, we are pleased to see that the proposed regulations will ensure that "religious creed" is interpreted in a manner consistent with Title VII and its implementing regulations to include "all aspects of religious observance and practice, as well as belief" – or lack thereof. This language will ensure that "religious beliefs" extend beyond traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism and include non-theistic "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views."

We also welcome those provisions that will ensure that discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions, as well as discrimination on the basis of sex assigned at birth, gender identity or expression, differences in sex development, and affectional or sexual orientation. This is consistent with how the term sex has been interpreted by Pennsylvania courts (and how the term sex as used in Title VII and Title IX has been interpreted by federal courts) and will help provide clarity and ensure uniformity when it comes to non-discrimination protections for the LGBTQ+ community and for pregnant people in Pennsylvania.

Finally, we are extremely pleased to see that the proposed regulations define "race" in a manner consistent with Title VII and 42 U.S.C. § 1981. By ensuring that race includes shared "ancestry, national origin, or ethnic characteristics," as well as "interracial marriage or association," the regulations make clear that Pennsylvania's non-discrimination laws encompass the diverse and insidious ways in which discrimination on the basis of race can manifest. We particularly welcome provisions that ensure that race includes "traits historically associated with race," including hair texture and protective hairstyles; this is consistent with how the term race is interpreted in other states and will ensure protections against a form of racial injustice that is all too common for Black people, and in particular, Black women, who often find their hair policed in schools and in the workplace.

In short, the proposed regulations will provide clarity to those charged with complying with the law and will ensure that employees, students, and members of the public understand the protections afforded to them under these statutes. This in turn will help make Pennsylvania a more just and equitable place for all. Thank you for your consideration.

Andrew Goretsky
ADL Philadelphia Regional Director

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Independent Regulatory
Review Commission