

Testimony in opposition to Idaho House Bill No. 2 re: “sexual orientation” and “gender identity”

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Thank you for the privilege of speaking to you today. I urge you to oppose House Bill No. 2.

When it comes to the operation of private businesses and private organizations, our default position should be to support freedom—not to increase the regulatory burdens imposed by government.

We should have faith that the people who know best how to run a business are the people who own and operate it—not lawyers, government bureaucrats, or even legislators. And we should have respect for the freedom of businesses, schools, and non-profit organizations to hold to their own, deeply-held beliefs, and to act on such beliefs. Yet this bill would substitute the judgment of government officials for that of private businesses and organizations regarding what qualities or characteristics are most relevant to a particular job, and regarding how to operate their business.

Ironically, there is actually little evidence that such laws are even necessary. Communities in Idaho that have adopted similar laws at the local level have reported almost no complaints. Many businesses have already adopted such policies as an internal business decision. These facts undermine any suggestion that “discrimination” of the type targeted here is endemic, or that government action is required to arrest the problem. A business that places unfounded prejudice ahead of legitimate qualifications will be punished by the forces of the free market itself. There is no need to bring the heavy hand of the government down upon it.

However, where such laws exist, they can result in costly lawsuits and crippling fines, putting some small enterprises out of business altogether. Such laws invite disgruntled employees to sue for “discrimination” over a characteristic (in the case of sexual orientation) which is not even visible and of which the employer may have been unaware. In the case of public employers, such laws at the local and state level have led to large settlements being paid at taxpayers' expense.

Disgruntled customers have sued businesses in the wedding industry under the public accommodation provisions of such laws for declining to participate in same-sex “weddings” (even when the business made clear that they would serve individual homosexual customers in other ways that would not involve celebration of their homosexual partnership).

This is not to say that there is never any place for non-discrimination laws at all. “Sexual orientation” and “gender identity,” however, are unlike most other characteristics protected in civil rights laws. The federal Civil Rights Act of 1964, for example, bars discrimination based on “race, color, national origin, sex, and religion.” The first four of these (race, color, national origin, and sex) are included largely because they are inborn, involuntary and immutable. Religion, while voluntary, is explicitly protected by the First Amendment to the U.S. Constitution.

Yet none of these traditional categories of protection involves as large an element of chosen behavior as sexual orientation or gender identity, where the issue is not who someone is (as with race and sex) or what they believe (as with religion), but is primarily about what they do—engage in sexual relations with someone of the same sex (in the case of sexual orientation), or present one’s self as the opposite of one’s biological sex (in the case of gender identity).

Finally, laws like House Bill No. 2 may do little to prevent unjust or irrational discrimination, but at the same time may prepare the way for reverse discrimination. The more open homosexuals and transgendered people become, the more people who hold traditional values will be forced to conceal their sincerely-held personal beliefs—or face punishment for expressing them. This has happened even when an employee’s views are expressed outside of work, and even when no explicit reference is made to sexual orientation or gender identity.

Efforts to add “sexual orientation” and “gender identity” as protected categories under civil rights laws should be opposed by anyone who believes in freedom of speech, freedom of association, freedom of belief, a free market economy and limited government.