

Mr Chairman, members of the Committee:

My name is Anne Hausrath. I live in Boise. Thank you for holding this hearing. I speak for myself and my family. I am a committed Christian. My husband and I have been married for 43 years with three adult children and four lovely grandchildren. I urge you to pass HB2.

During my lifetime it once was legal to discriminate against people because of their race, ethnicity, religion, sex, age or disability. At that time, there were people who truly feared that granting legal protection to some people would infringe upon their own religious freedom by removing their ability to choose whom they served in the public sector.

The decision you face here is historic and I appreciate that it is not easy. It is extremely hard. You are being asked to weigh deeply felt and passionately expressed beliefs that appear contradictory. I have some idea of the dilemma you face because I served for eight years on the Boise City Council.

You are being asked to protect the rights of people who have told you their personal stories of real and very hurtful discrimination. You are being told by

others that they fear the possible consequences of adding that type of protection under the law.

Much of the testimony, both for and against has been about fear. Acting now to pass HB2 will go a long way toward reducing the fear of LGBT folks, their family and friends for they will no longer fear loss of job or housing because of who they are.

I believe that much of the fear expressed in opposition to the bill is based on misunderstanding. Identifying and clearing up misunderstandings on both sides won't be easy. But Idahoans have faced and resolved tough issues in the past.

The good news is that no one these past few days has actually questioned the existence of or the need for the Idaho Human Rights Act. Wow! We've come a long way Idaho!

The Idaho Human Rights Act as it now stands was not enacted easily. It is the result of hard decisions by people of faith, courage and integrity who believed that sometimes laws are necessary to help us all achieve our highest and best nature.

Please continue the hard work to bring Liberty and Justice for all. Please send HB2 on to the floor with a “do pass” recommendation. Thank you.

## Testimonial in Support of HB2

My name is Matthew Montoya residing in Boise, ID. I'm submitting my testimony on behalf of myself and my father, Marvin Montoya, a small business owner. I have had the privilege of working for my father, who has 30 years experience in healthcare as a group benefit administrator here in Idaho, but doing business nationally.

During my freshman year of college while looking for a part-time job, I asked my father if I could come to work for him. He informed me that I would need to submit a resume and interview with the VP of Operations. I should have known better, as this was the way we grew up, not to expect anything that we aren't willing to earn for ourselves. I was hired and began working part-time in the mail room. I worked with a diverse group of people, many of which did not know I was the owner's son until many months having worked there. My father employed people based on their merits, their willingness to learn and work hard. I suspect these were the same reasons I was hired.

My father, having grown up Hispanic and an army brat knows what discrimination looks and feels like. His family was usually paired in housing with other families of color. Likewise, my father knew what discrimination based on sexual orientation was like, as his younger brother was gay. This he knew at a very young age when my uncle would be bullied and my father was always there to protect him. This protection of him extended to when my uncle was drafted into Vietnam. Knowing that Gregory was unlikely to thrive in that current military culture, he enlisted himself and served two tours so that my uncle did not have to be deployed.

The reason for this background is because my father understands discrimination. He also understands business, being a successful business owner himself. His concerns have been growing with the increasing negative perception of Idaho in the business community. My father is a representative of Idaho business and finds it hard to explain to large employers who would like to bring business to Idaho, why we don't have the necessary protections under the law that show Idaho is dedicated to protecting its workforce.

Some of the debate has been trying to define the words "sexual orientation" and "gender identity." However, can we not all agree that everyone has a sexual orientation and gender identity? If that is the case, then wouldn't everyone benefit from this amendment? I'm not here to debate the morality of homosexuality and I don't believe that you are here to do so either. Let's be clear, everyone has a sexual orientation and gender identity. Therefore, these aren't special protections, they are equal protections.

I had the incredible fortune in growing up with a loving family. I grew up in a Christian household, attended church on Sundays, and was an active member in my church's youth

programs. I learned about love, forgiveness, kindness, and community, the types of themes I thought were to be universal. Such as, treat others like you would like to be treated.

Full disclosure, I am gay and your consideration today does affect me personally. Please support adding these four words to the Idaho Human Rights Act. No more, no less. Thank you.

*Matthew Montoya*

My name is Scott Nicholson; I'm a resident of Idaho.  
I'm a civil engineer.

Former Seabee officer in the Naval Civil  
Engineering Corps.

Vietnam Veteran.

Almost 30 years in industry and came to Idaho in  
2001.

I now work in the commercial real estate field.

Married to the same woman for over 40 years.

Father of 2 children, both who reside here in Idaho.

Elder in my church.

Lifelong Republican.

Idaho is our home. Our family & our friends are  
here.

I grew up in the south during segregation. I've seen  
"Whites Only" restrooms, water fountains, and the  
"whites only" dining area of the Woolworths. Much  
of which was justified under the name of religion. It

seems rather unbelievable now, but such was the case.

I listened to the testimony here and haven't heard god mentioned so much since I attended a Billy Graham rally.

We are a religiously diverse community. Religious freedom is not under attack here. Equal rights under the law are being discussed here.

Relative to our Constitution and our laws, it is in discussions such as this when I fully appreciate why our forefathers put some distance between church & state. We're never going to get consensus on religious interpretations. Many of the arguments I've heard are the same arguments claimed during our civil rights debates. To quote one of probably thousands of political quotes from national leadership: *"Declare church and state forever separate and distinct; but each free within their proper spheres."* Ulysses S. Grant. Is there any absolute in such matters? Of course not. But it

illustrates the issue of overreach by either politics or religion. We have to take great care, but at the end of the day, we are joined together under a common Constitution, not one common religion.

We've had time to reflect on these issues. Yes, as individuals we're each pulled by our own belief systems & fears. Some of those beliefs are limited to our world view, some by our individual faith, some by experience. We're all on our own paths, but we are joined together under one Constitution, not one religion.

We're simultaneously seeing great religious organizations wrestle with these issues. We've heard the reflections of a new Pope on this subject. We're - hearing the reflections of the Mormon Church on protections for the LGBT community. I believe they are supportive of including protections for the civil rights of our LGBT citizens.

I don't come here easily. I spent the majority of my life insulated without significant interactions with

the LGBT community. Over my career I met, supervised and worked with members of the LGBT community.

When you boil it all down, they're just folks who want the same things I do when it comes to equal & fair treatment. They deserve that, in my opinion.

My god loves us all and I'm more sure of that today than I have ever been.

A friend of mine commented that ..."the testimony against the Add the Words bill is itself evidence that we need to Add the Words." There have been some pretty rude things said in this forum.

Great social change causes fear of the unknown; I get that. But it's time, as adults, we contemplate issues, grow in our understanding, and at some point, do what's right & move on.

I urge you to pass this bill consistent with the matured contemplations of many of our faith based organizations.

Mr Chairman, Members of the committee,

My name is Fiona Kilfoyle. I was born in Idaho, raised here, and worked my professional life here. I pay taxes, own a home, am married, am involved socially with a number of local organizations and groups. I am transgender. I am also bisexual. The hidden B in LGBT. I am Idahoan.

I am lucky to be in a situation that I can live openly, as my employer is a multinational corporation and has its own internal policies which prevent discrimination. A lot of the people you have heard in the past 3 days are not as lucky as I am in this. This does not mean I'm not harassed every. single. day. on the streets and in the stores of Boise. But I weather this in order to affect change.

Many have said that this legislation won't make people kind. This is true. What this legislation would do, is allow us to live without fear that we will be fired or evicted for being who we are. My way to help people become kinder is this. I get to know people. People meet me, understand who I am and what my story is. I see some of these people all the time. At the supermarket, gas station, movie theater, restaurant, etc. And they take that experience with them through their day..

Later they might be kind to a brother, sister, niece, nephew, coworker, or just someone at a supermarket. And maybe, just maybe, they reach out to this person with more kindness than before, that could be the moment that helps a coworker retain their job, prevents a situation from becoming violent with a stranger, saves a life of a person in crisis.

This bill can maintain a level playing field and save lives, while letting all of \*us\* change the hearts of Idahoans.

Please pass HB2 to the floor with a recommendation to pass.

Thank you for your time in these hearings.

Mr. Chairman and members of this Committee:

About a year ago, I was involved in a discussion about freedom. We went around the room and each person gave their definition of the word freedom.

-to be able to act without restraint or bounds.

We realized rather quickly in this discussion that if I were to exercise my freedom without bounds or restraint; it won't be long before my freedom encroaches upon another person's freedom. Therein lies the clash that Rep. Crane mentioned yesterday.

This week, we've heard heart wrenching personal testimony after testimony of deep hurt and much pain. The pain of rejection, of hopelessness, the deep longing for a sense of worth and being loved and accepted.

Every single one of us in this room, whether LGBT or straight, EVERY SINGLE one is made in the image of our Creator. And because of that, every single one in this room has worth. *and value.*

Mr. Chairman and members of the committee, I would submit to you that the passing of House Bill 2 bill can't give that sense of worth that we've heard talked about.

I would ask you to vote no on this bill. This bill, if passed, not only would trample on the freedoms of those who believe differently concerning the LGBT issues, but even worse would be the fact that they would be forced to, by law, accept and condone something that goes against their own conscience.

Respectfully submitted, Kari Wilson (Nampa Dist. #13)

1-28-15

Testimony to the State Affairs Committee of the Idaho House of Representatives  
Julie Hoefnagels, Boise - January 28, 2015

First I would like to thank the Committee for hearing testimonies on this important subject. My name is Julie Hoefnagels, and I am speaking for myself and my husband, Cees Hoefnagels. I work as an interpreter for a local hospital, the Ada County courts and the Boise school system, and my husband is a retired semiconductor engineer. We have been touched here by people's personal stories of living with discrimination and deeply saddened by calls from some to exclude the LGBT community from human rights protections. I believe that the sentiment behind most of the impassioned pleas to vote "no" on Add the Words is simply fear, fear of the unfamiliar. I hope that hearing the testimonies of so many LGBT people and their supporters and families over the past three days will have made the unfamiliar a little more familiar.

When I was 19, my oldest childhood friend came out to me as gay after our first year away from home at separate colleges. Because of my religion at the time, I judged her for it and we drifted apart, but she always stayed in contact, and gradually as the years passed, my unreasoned fear disappeared. This lifelong friendship and friendships with other gay and transgender people (including a dear cousin) has made me a more open and loving and richer person.

I see the condemnation of gays and resistance to giving them protection under the law as a clear parallel with the other great civil rights issues of our age: freeing the slaves, giving them the vote and giving women the vote. Biblical passages were cited in support of perpetuating all of these unjust situations, and I do not believe that any such changes could have been made without legislation.

In closing, on the topic of homosexuality, Pope Francis recently said, "Who am I to judge?" Society is clearly evolving. We should accept this and focus on the fact that some within our society - the LGBT community - are still being denied basic human rights: protection from being dismissed from a job, kicked out of their living quarters, harassed or beaten - rights that the rest of us have come to take for granted. Idaho needs to join other humane states and countries around the world. We must let go of fear and choose a path of love and compassion. Now is the time to add the 4 words to Idaho's anti-discrimination code.

Thank you for your time and consideration.

I love you little bird, you've got this.

Greetings Chairman and

My name is Denae Carson. I am 17 years old. I have lived in Idaho my entire life and am a 4<sup>th</sup> generation Idorona. I am a daughter of two loving parents with two sisters. Growing up public bathrooms were terrifying and always a big ordeal for my family and I. One of my parents is gender fluid. This means that they do not fit into the binary gender system. So picking a bathroom is horrible. Going in was always full of a chorus of "man" so that people gave us less funny looks. Granted we still got the range of looks, but putting my parent in a box it made the rest of the world feel safer. When I hear people talking about how they fear for their children's safety going in to public restrooms if transgender people are allowed into public restrooms. In reality though it is not the people who neatly fit into the perceived gender identity and the one that they happened to be born into, they are often the attackers. They are not the ones that think it through, not the ones that have a strategy to get in and out. The gender conforming people like you and myself, do not have to calculate if we can wait until we get home, or if we should not drink water so that we won't have to use the bathroom while stuck in a public place. Nobody cares more about safety and privacy in

I am not naive enough to believe that adding the words will change overnight the way that my family and my friend and my loved ones are treated but I believe it is a step in the right direction so that people feel protected by the law.

public Restrooms than transgender people.

please

(signed there for questions)



Hello Chairman and Members of the Committee,

First, I would like to thank you for allowing us to give testimony today. I am here in support of House Bill 2. My name is Evangeline Beechler. I have been an Idaho resident for 23 years. My mom moved me, my twin sister and my little brother to Idaho in 1992 from New Orleans, Louisiana after my father passed away. I attended high school in Coeur d'Alene and I am a graduate of North Idaho College and Boise State University. I now live here in Boise.

I feel very fortunate to have grown up in Idaho. Idaho is not just the state in which I live; it was my family's saving grace. At the age of 13 when we moved here, I realized what a great state this was because I felt safe for the first time in my life. It was traumatic moving across the country to a foreign place but Idaho welcomed us. It's the Idaho way.

Idaho's values of hard work, giving back to your community, and treating others with dignity and respect are put into everything I do. After graduating high school, I taught youth group to middle schools kids at St. Pius X in Coeur d'Alene. I volunteered at St. Vincent De Paul with an after school art program. I coached baseball with park and rec and I worked for the Coeur d'Alene school district for 7 years.

Here in Boise, I have been the Clinical Supervisor of a Developmental Disabilities Agency serving children and adults for over a decade. As clinical supervisor I have worked closely with families, teachers, school districts, the Department of Health and Welfare and even the Department of Juvenile Corrections. I am member of many associations including the Idaho Association of Developmental Disabilities Agencies, on the Board of Directors of the Idaho Association of Community Providers, and I am a proxy member of the Governor's appointed Idaho State Behavioral Health Planning Council. I coach Little League and I served as the co-president of North Boise Little League last year. I also serve as the vice-chair and precinct committeeman in my legislative district.

This is not my first testimony at a public hearing in front the Idaho State Legislature. I have advocated for those in our community without a voice for years mostly in front of JFAC and the House or Senate Health and Welfare committees. This is, however, the first time I have testified as a member of my community, the LGBT community.

It is not easy facing the fact that I do not have protections in my home state of Idaho. To live in fear of losing my home or my job simply because of who I plan to spend my life with, having to face discrimination on a daily basis, and having to redefine people's predisposed ideas of what a member of the LGBT community looks like. I am not defined by who I love. I do not put my sexual orientation first. I deserve to be judged by my merit, by my commitment to my community, and by my hard work.

Now, you have heard a lot of testimony against HB2 and I understand your struggle because you are being given conflicting opinions. I want to leave you with this, these are facts: I am a daughter. I am a sister. I am your child's youth group leader and coach. I teach your son with Autism how to socialize with his peers. I advocate for those without a voice. I stand up for what I believe in. I am not a threat to your family. I am an asset to your family. I urge you. Please vote in favor of adding the words. Thank you.

I stand for questions.

## Add the Words

January 28<sup>th</sup>, 2015:

I should begin by thanking the chair and committee for hearing me today, but also for serving the community and hearing this issue this week. My name is Nicholas Roy Eisele, I'm 20 years old and I'm currently finishing my final year at Boise State University, pursuing a Bachelors degree in Political Science. I'm here testifying as a heterosexual in support of House Bill 2, for all the people in my life that I know to be good but have been negatively affected by the omission of four simple words. Though I do hope to persuade this Committee, I don't represent any specific organizations, businesses, or friends ... though some of them are in this room and they're all fantastic people.

To be normal is truly a difficult thing to strive for. On one hand, being normal seems to mean unoriginal, right? So why even pursue it? But on the other hand, being normal is a way of feeling accepted by our fellow citizens ... especially, I suspect, for those that are told their core is fundamentally wrong. I'm here to say that I think I share a similar pain with those in the LGBT community. I don't feel like I belong to any tightly-knit social circle, like some of my peers who have known each other since birth, nor do I have so few relationships to justify any complaints. And so I'm caught between our society which seems frightened of the future and anxious to be seen, and my own limitations as an individual ... Why are we so frightened?

Ultimately, I hope that each of us in this room, and perhaps in the world, too, "knows what it means to be alone." But even that isn't the whole picture, either, as much as it might be true. The point I really mean to make is that as much as we should never forget how it felt to be alone, we must also remember the day we first found connection; because sometimes we forget what it was like before and ignore those who are still searching for it.

So really this issue of Adding the Words, it's about community, and our obligation to reach out. Isn't that "love...?" Well, what is "love?" (Thank you, Haddaway) Is it even real? I mean, have we wrongly set it apart from regular attractions? I don't know the answer. But it's irrelevant, because I assume that if it is real, it must be the closest thing mankind has ever known to be good. If two individuals claim to have found this concept of love, something more consistently good than our other common interests, then I should have no right to treat them as inferior or unworthy of equal treatment. Regardless of having actually found "love," both the law of the state and the law of society should not disadvantage them in their search.

The role of virtue in a society is its ability to foster *happiness*: the qualities in a person that gives them meaning and purpose ... qualities usually found with the help of our community. I believe this concept of "love" is a true social virtue; and though there will be perversion on *all sides* of it, we cannot let the actions of a *sample* determine the characteristics of the *whole*. Just because lawsuits were filed in states enacting laws similar to HB2, doesn't mean they will be filed here.

So please, I respectfully beg of you to understand the plight of the abandoned, the forgotten, and the isolated. I beg of you to recognize this as an issue that extends far beyond just the LGBT community. I beg that you will remember the day you were alone in a society full of potential connection.

I have hope that this appeal to the humanity in you will change your perspective on HB2, but if not I will also provide this final argument:

I've surrendered my natural rights to my government with the hope that it will secure the liberties and opportunities of both my peers and myself. But I've found that instead, it has come to treat my peers as though they don't exist.

Homosexual, Bisexual, Transexual, Transgendered, Asexual ... as some of you have noted, the list could go on. Nevertheless, we are each human with the capacity of reason, and therefore deserve equal recognition and protection under the law. It's nonsense to enact a Human Rights Act that doesn't recognize *all* the members of a community.

Representatives, again, I thank you infinitely for serving our community and listening to my testimony. I will respond to any questions, but again, I don't represent anyone but myself.

## Add the Four Words Official Testimony – 1/28/15

Thank you to the committee for holding this hearing and allowing the voices of the public to be heard.

I'd like to start out by saying there are people who would like to be here today, providing you with their testimonies about why adding the four words "sexual orientation and gender identity" to the Idaho Human Rights Act is important, but they can't. They can't be here today because they run the risk of being outed in their workplaces. They can't, because being outed could result in the loss of their jobs, their homes, and their lives.

Democracy is failing them.

For those who stand here today facing the possibility of eviction, job loss, and violence, thank you. And to those who are silenced because they are not protected by Idaho law, I am sorry that you are not able to be here today because you do not have the same human rights as those who testified against you.

When Idaho citizens cannot participate in our democratic process, we know something is wrong. It is a process that was designed to represent all people, but not all people are truly represented and protected because "sexual orientation" and "gender identity" have not been added to this bill.

Systematic oppression marginalizes certain groups and offsets the balance of power within a given community. As it stands, we are marginalizing the LGBTQIA community by not allowing them the same rights as other Boise citizens protected under this bill, resulting in systematic inequality, loss of life, job losses, and a weakened community.

Here in Boise, we know we are protected by law if we are fired due to race, color, religion, sex, national origin, age or disability. We also have the ability to *choose* our religion, and there are protections in our Idaho Human Rights act for those who choose religion. Being on the LGBTQIA spectrum is not a choice, but let's entertain for a second that it is. If a certain populace is choosing a specific religion and receives protections for it, it is fair to say that those who "choose" to live within the LGBTQIA community deserve the same protections.

But anyone who identifies as LGBTQIA does not choose to identify this way, which furthers my point that this population in Idaho is deserving of protection from discrimination because gender identity and sexual orientation are intrinsic human traits. This law encourages business owners to treat all Idahoans with the respect and dignity they deserve—the same respect they receive at work and in the public domain because of their races, religions, and genders. This law asks for the same respect and protection those who hold religion close to their hearts receive.

I encourage lawmakers to add the four words to protect our Idaho citizens. I encourage the committee to add the four words so every Idaho citizen can come down to the Lincoln Auditorium and participate in democracy without the risk of losing their homes, their jobs, or their lives. I encourage you to give every Idahoan a voice.

Erin Nelson

Mr. Chairman and distinguished members of the committee: First, I want to thank you all for taking on the responsibility of addressing this important issue. My name is Caleb Hansen and I grew up here in Idaho. I graduated from Meridian High in the year 2000, and attended 4 semesters of college in Rexburg. Since 2008 I have made my living as a small business owner in Meridian located on the corner of our State's busiest intersection at Fairview and Eagle. I am unaffiliated with any political party, I am neither gay nor transgender, and I testify representing myself.

The issues before this committee are not of a partisan nature.

I grew up believing that freedom of religion is one of the things that make America truly great. Though my religious and political affiliations may have faded over the years, those values have not. The idea that all of us allow others to live according to the dictates of their own conscience, isn't just the right thing to do, it is the very mechanism by which we guarantee that same freedom for ourselves.

The Idaho Legislature crafted our human rights law with thorough religious exemptions which have stood the test of time ~~without concern for religious liberties~~. This bill is not starting from scratch without concern for religious liberties; it is carefully adding 4 words to a law with extensive and effective religious exemptions. Adding these 4 words does not delete the pages of religious exemptions that have protected our state for nearly 1/2 a century. <sup>all ready in place</sup>

Religious freedom is not a partisan issue, it is something all Idahoans value; including those in favor of passing this bill. The bill itself has never been a partisan issue, it was presented 5 years ago by 2 Republican Senators and narrowly defeated in what was not a party-line vote. In Idaho, a majority of citizens whether Republican or Democrat, are in favor of making this bill a law. In a December 2014 study conducted by Utah polling firm Dan Jones & Associates, and published this month by Zion's Bank, Idahoans were asked a question which perfectly reflects the provisions of HB2:

*"Should it be illegal to discriminate in housing, employment, and business based on sexual orientation and gender identity in Idaho?"*

52% of Idahoans who identify themselves as "very conservative" believe this bill should be law.

Republicans, (58%)

Democrats, (87%)

Independents, (72%)

"Very Active" Latter Day Saints, (64% for /28% against)

"Somewhat active" Latter Day Saints (68% for /26% against)

Catholics, (71% for/27% against)

Protestants (57% for/27% against)

Each of these demographics not only favors the passage of this bill, but in each of the religious demographics the supporters of this bill more than double the number of those opposed to it.

I join with republicans, with democrats, and Independents. I join with conservatives. I join with Mormons, Catholics, and Protestants in asking you to protect your brothers and sisters, protect your sons and daughters, your friends, and your co-workers, guarantee your loved ones the freedom to live, work, and do business in the state that they help make great.

My name is Christy Cottle. I stand here before you today as a mom of two amazing children.

Almost three years ago my life changed when my 13 year old son shared with me that he was gay. I remember as I held him sobbing in my arms the terror I felt for my beautiful son's life. News stories came flooding through my head of suicides, bullying, rape, rejection and so on. What was I supposed to do? How would I keep him safe? Now I know this is a worry for many parents. But for affirming parents of an LGBT child those fears increase ten fold. This is not a safe world for them... yet. There is something seriously wrong that I am standing here before you in 2015 and begging for my child's safety and basic human rights. And there is something not right about a mother of an LGBT child knowing that their child carries such a burden and fear for their safety. My son had suicidal ideations at a very young age. He suffered in silence for years and carried a heavy burden that no child should have to bear. He had been told for years by my religion and others that he was an abomination and less than other human beings.

I had grown up as a Mormon and had been raising my children in that religion. There is no room for my son in the LDS church unless he chooses to stay celibate and live a life without companionship. There is no room for families that affirm their children in their authenticity and is not a safe place for our LGBT children and families. I don't want to change my son and thank him often for living boldly amidst the potential repercussions from community, family and friends. He has changed my family and I for the better. Our hearts have been opened and we have made friends with some of the most amazing people. He is perfect just the way he was created and any mom should feel lucky to get to raise an LGBT child.

My sweet son is now 16 years old. And I am going to take a moment to publicly brag about him.

He is a junior at Idaho Arts Charter school and is a 4.0 student.

He won state in 2014 for tenor vocals.

He is an amazing make up artist and often sought out by his young friends and adults to share his expertise.

He has starred in several shows with Music Theatre of Idaho and has aspirations for being on Broadway.

He volunteers with Genesis Service Dogs as a puppy raiser. Which means that he takes a 6 month old puppy to school with him daily as well as other activities. He also cleans up after the messes the pup makes and works hard to socialize and train her for someone else one day.

He has a heart of gold and is loved and respected by his peers and adults alike. And best of all he is not afraid to still hug his mom in public.

I am here as a mom to stand for my son and many other beautiful souls I call friends. I will no longer stand by and be silent while watching the LGBT community be marginalized and bullied. I am here as an Idaho citizen to plea for legislation that will protect my son from the injustices that so many have endured, to take a stand for the silent, and ask for the civil rights of these individuals be ensured by our lawmakers. I cannot accept any less. What mom would?



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

January 26, 2015

The Honorable Ilana Rubel  
Idaho State Representative  
Statehouse  
VIA HAND DELIVERY

Re: House Bill 2—Proposed Amendment to Idaho Code §§ 18-7301, 67-5901 and 67-5909 – Our File No. 15-50391

Dear Representative Rubel:

You ask several questions in connection with House Bill No. 2 (“HB 2”). The legislation, if adopted, would include freedom from discrimination on the basis of sexual orientation or gender identity as a civil right under Idaho Code § 18-7301 and prohibit such discrimination under the Human Rights Act through amendments to Idaho Code §§ 67-5901 and -5909. I will answer the questions in order posed.

**Question No. 1:** Does federal (or state) law already exist which protects gays/transgender people in Idaho from discrimination in employment, housing and public services/accommodations?<sup>1</sup> This question cannot be answered with a simple “yes” or “no” because the relevant law is not settled.

- **Title VII.** Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of “sex.” 42 U.S.C. § 2000e-2(a)(1). Title VII applies, with certain exceptions, to both public and private discrimination. *See, e.g., Fitzpatrick v. Bitzer*, 427 U.S. 445, 447-48 (1976). No appellate court has extended the statute’s prohibition of sex discrimination to sexual orientation discrimination. However, the Equal Employment Opportunity Commission (“EEOC”) concluded in 2012 that sexual stereotyping discrimination does fall within Title VII’s prohibition. *Macy v. Dep’t of Justice*, EEOC DOC 0120120821, 2012 WL 1435995, at \*6 (April 2012) (construing Title VII to prohibit discrimination on the basis of “gender”—a term that “encompasses not only a person’s biological sex but also the cultural and social aspects associated with masculinity and femininity”). A federal district court, moreover, denied a motion to dismiss in a suit alleging sex stereotyping discrimination by the Library of Congress. *Terveer v. Billington*, Civ. No. 12-1290(CKK), 2014 WL 1280301, at \*10 (D.D.C. Mar. 31,

---

<sup>1</sup> I construe your reference to “transgender” to be to the term “gender identity” used (but not defined) in HB 2.

2014) (“[u]nder Title VII, allegations that an employer is discriminating against an employee based on the employee’s non-conformity with sex stereotypes are sufficient to establish a viable sex discrimination claim”) (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989)); *see generally* Zachary R. Herz, Note, *Price’s Progress: Sex Stereotyping and Its Potential for Antidiscrimination Law*, 124 Yale L.J. 396, 421 (2014) (discussing federal courts’ varying application of *Price Waterhouse*, and observing that a “broader interpretation of *Price Waterhouse*” to include sexual stereotyping is “expanding”). It is therefore arguable, but not established, that Title VII prohibits gender identity and, by implication, sexual orientation discrimination.

- **Equal Protection Clause.** The Fourteenth Amendment to the United States Constitution guarantees equal protection of the laws. The Equal Protection Clause applies only to “state action” and thus ordinarily has no impact on private conduct. It is enforced principally through 42 U.S.C. § 1983. Employment or other forms of discrimination against individuals because of their sexual orientation or gender identity may violate the Equal Protection Clause. The important—and not definitively resolved—issue is what standard of review governs determination of whether the Clause has been violated. Traditionally, sexual orientation, and presumably gender identity, discrimination has been subjected to rational basis review, but the Ninth Circuit applied a “heightened” form of review in *SmithKline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471, *reh’g en banc denied*, 759 F.3d 990 (9th Cir. 2014). There, the court of appeals found that a prospective juror was struck from a venire panel because of his perceived sexual orientation. The panel then determined that *United States v. Windsor*, 133 S. Ct. 2675 (2013), overruled prior circuit precedent applying rational basis scrutiny to sexual orientation discrimination. 740 F.3d at 480-84. Application of “heightened” scrutiny to governmental employment discrimination on the basis of sexual orientation/gender identity discrimination would likely result in relief under § 1983.

- **Human Rights Act and Municipal Ordinances.** Idaho anti-discrimination statutes do not contain a specific prohibition with respect to sexual orientation or gender identity—as reflected by the proposed amendments in HB 2. *See* Idaho Code § 67-5909 (prohibiting discrimination on the basis of race, color, religion, sex, national origin, age or disability). However, it is theoretically possible that the term “sex” can be construed consistently with the EEOC’s interpretation of Title VII. No Idaho state court has reached the issue. Various municipalities also have been active in this regard, adopting anti-discrimination ordinances that prohibit the denial of the “full enjoyment of” public accommodations because of sexual orientation and gender expression/identity. *See generally* Leslie M. Hayes and Lucy R. Juarez, *Idaho’s Inconsistent System of Employment Protections for Lesbian, Gay, Bisexual and Transgender Individuals*, 57 *Advocate* (No. 2) 39, 41-42 (Feb. 2014). Each of these ordinances defines the term “full enjoyment of” expansively “to include, but be limited to, the right to . . . any service offered or sold by any person or establishment to the public . . . without acts directly or indirectly causing persons of any particular sexual orientation and/or gender identity/expression to be treated as not welcome, accepted, desired or solicited.” *See* Boise City Code § 6-02-02; Coeur d’Alene City Code § 9.56.020; Ketchum City Code § 9.24.020, Moscow City Code § 19-2.D; Pocatello City Code § 9.36.020; Sandpoint City Code 5-2-10-2.

- **Fair Housing Act.** The Fair Housing Act prohibits various forms of discrimination, including on the basis of sex, in connection with the sale or rental of dwellings. 42 U.S.C. § 3604. Once again, the issue is whether the term “sex” extends to discrimination on the basis of sexual orientation/gender identity under this statute.

**Question No. 2:** Would the proposed text of HB 2 force clergy to marry gay couples? The answer is “no.” Neither § 18-7301 nor § 67-5909 applies to religious ceremonies (which I understand to be the focus of the question by virtue of its reference to “clergy”). Idaho Code sec. 73-402 would likely be available to assert as a defense in the event an injunction or mandamus were sought against a religious order or a closely held religious corporation. *See Burwell v. Hobby Lobby Stores, Inc.* 134 S.Ct. 2751, 2775 (2014).

**Question No. 3:** Would the proposed HB 2 impair any Idahoan’s freedom of speech (or ability to express views on homosexuality)? As a general matter, the statutes amended by HB 2 regulate conduct, not speech. However, § 67-5909 contain provisions directed to, *inter alia*, written material such as notices and advertisements that may contain commercial speech. *See* §§ 67-5909(4), -5909(5)(b), -5909(7)(c), -5909(8)(f). Commercial speech may be regulated more broadly than non-commercial speech. *See, e.g., Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2667-68 (2011) (“Under a commercial speech inquiry, it is the State’s burden to justify its content-based law as consistent with the First Amendment. . . . To sustain the targeted, content-based burden [the involved statute] imposes on protected expression, the State must show at least that the statute directly advances a substantial governmental interest and that the measure is drawn to achieve that interest.”). Assuming that prevention of certain types of discrimination is a substantial government interest, a plausible argument exists that HB 2 satisfies this relaxed standard. The answer to this question is thus likely “no.”

I hope that this letter adequately responds to your questions.

Sincerely,



BRIAN KANE  
Assistant Chief Deputy

BK/tjn

April Hay  
5212 Kootenai St.  
Boise, ID 83705  
(208) 969-2519

BSU grad. at 1 am

Mr. Chairman, Committee members: ~~My~~ My name is April Hay, ~~and~~ I have been a resident of Boise since I was a small child. I'm ~~not~~ I am bisexual. here today to urge you to support ~~this~~ this bill.

Throughout these two days of testimony, many of those in opposition to this bill have asked why <sup>businesses</sup> ~~they~~ should be required to provide goods, services, or employment to ~~groups~~ individuals they find distasteful. Businesses ~~and employees~~ should be required to treat customers ~~and employees~~ equally regardless of ~~their~~ sexual orientation or gender identity for the same reason they are required to treat customers equally ~~and~~ regardless of their race, sex, or religion.

Here in Boise, I may have several alternatives if a business refuses to serve me because I am bisexual, but there are many parts of the state where that is

2.

April Hoy  
5212 Kootenai St.  
Boise, ID 83705  
(208) 869-2519

not the case. In Idaho's many small towns

large, sparsely populated areas

- There may not be more than one bakery to choose from.
- There may not be more than one grocery store within practical distance.
- There may not be another doctor's office to go to if a gay man or a transwoman is turned away from the nearest one.

Even where other options are available, using public accommodations

should not ~~require~~ ~~of~~ ~~being~~ require gay, lesbian,

bisexual, transgender, or (for that matter) straight Idahans

to brace themselves for the possibility that they will be

humiliated or have their day disrupted by denial of

service — by being told "we don't serve your

kind here".

I'd like to finish with a note on religious freedom.

Adding the words will not impinge upon the religious

3.

Apr. 10  
5212 Kootenai St.  
Boise, ID 83705  
(208) 869-2519

freedom of those with religious objections to people like me.

any more than the Civil Rights Act impinged upon the

religious freedom of those with religious objections to

racial integration.

- People are still free to believe what they wish.

- They can gather for worship.

- They can preach their beliefs to others

- They can even practice discrimination when it comes to church hirings & provision of church services.

What they can't do with regard to race, & should

not be allowed to do with regard to sexual orientation

& gender identity is discriminate against people

outside of that private religious realm — to

tread upon the dignity of people who just

want to buy a cake or see a doctor.

- Thank you.