March 30, 2009

Rep. Mark Meadows
Chair, House Judiciary Committee
S1088 House Office Building
124 N. Capitol Ave.
Lansing, MI 48933

Re: HB4192

Dear Rep. Meadows:

According to the Michigan Legislature's website, you are a co-sponsor of HB4192, proposed amendment of civil rights statute, and also chair of the House Judiciary Committee. I am not a constituent of your district, but write to you in your capacity as chair of that committee, and am copying all committee members and the committee itself.

I am a Michigan citizen and this letter is in the strongest possible terms in opposition to HB4192, for numerous reasons that follow.

I have reviewed the proposed bill on the website. First, the definitions of the terms "sexual orientation" and especially "gender identity" are vague and ambiguous to the point of being ridiculous. What is "self-identity"? It is part of the definition of "gender identity", but not itself defined. What is sex "assigned at birth"? Even for those of us who believe in a Higher Power such as God as Creator, there is no evidence that human sex is "assigned at birth" by anyone or anything. It simply is what it is, male or female, one or the other, for each and every person. There are numerous ambiguities in the definitions that allow each person to interpret this statute differently, and more dangerously, allows any court with jurisdiction to interpret it to mean anything. When consequences can result from a violation, the existing Michigan case law (I am a lawyer and former state judge) require there to be no ambiguity, so that the public has clear notice of what is illegal. This bill completely fails that legal test.

Next, I doubt if I can persuade you personally to change your mind on this, since you are a bill co-sponsor, but the truth is that neither "sexual orientation" or "gender identity", no matter how you define them, are a valid basis for such legal preferences over other citizens. In part, this is because "sexual orientation" is based on a person's choice of sexual activity, and not on any immutable characteristic. The homosexual lobby has spent years and millions of dollars searching for some homosexual gene, and they admit that they have never found any evidence of one. If they even had enough evidence to fabricate or exaggerate that there was one, be sure they would jump on that opportunity. But they are not able to, because there is no such gene. Further, even by your vague definition of "gender identity" in the proposed bill, it is a choice, as opposed to something someone is born with. So your proposed bill would put what a person chooses to think their gender

which can change from day to day, and second to second, on the same level as inherent characteristics like race and actual gender, and the most fundamental human choice, religion. This is frivolous.

But even if you are not convinced of the above, please pay careful attention to the following, which is the deepest concern for how this broad and ambiguous proposed bill would probably be interpreted and implemented, to the utter destruction of quality of public life for all Michigan citizens.

First of all, it is legitimate for a private employer to base personnel decisions on their own criteria for their OWN business enterprise. If a person or business chooses not to hire a person because of their life style, that is legitimate. Otherwise, what is next? Substance abuse centers have to hire active illegal drug users as substance counselors, or else be charged with discrimination? Day care centers have to hire pedophiles, or else be charged with discrimination? Churches have to hire atheists, or else be charged with discrimination? Once you open this door, there is no end in site. Government has no power to tell private businesses or persons that they have to hire employees that do not meet their criteria. That is a market decision.

Of a greater concern is that the proposed bill is, I am told, virtually identical to one passed in Colorado last year. The proponents of it said that it would not be applied to allowing opposite biologically gendered persons in public restrooms/locker rooms for the opposite sex, but once they got it passed, guess what? That is how it is being applied. And that is how you will attempt to apply it here if you get it passed, no matter what you might say now. I have already seen a video account online of a woman in Colorado who was confronted by a man in a womens' restroom in a Colorado airport, and she has no legal recourse as a result of that insane bill that passed against overwhelming public opposition.

There simply can be no possibility of that happening here in Michigan. You cannot open the door to leaving all of the people in Michigan, citizens or visitors, at risk every time they need to use a public restroom anywhere in this state, or choose to use a public locker room, whether it be middle or high school students in school, or adults choosing to use a health club. HB4192 would give any boy in any school complete legal immunity to walk into the girls' locker room unannounced at any time, or vice versa, and if the school officials tried to intervene, they are the ones who would be legally in trouble. The same would be true at health clubs and in all public restrooms. This is how the same bill is now being applied in the experience of the state of Colorado.

At the very least, if HB 4192 is to pass committee or on the floor, it MUST contain, as a minimum , the following amendments:

1. Clarification that it does not constitute any legal defense to any indecent exposure

criminal charge at any time or place, so that the courts cannot interpret it that way.

2. Clarification that the term "public accommodations" does not apply to restrooms or locker rooms.

3. Alternatively, restrooms and locker rooms should be expressly exempted from HB4192.

4. Otherwise, the bill needs to state the obvious, which might otherwise be ignored by courts later, that it is not considered to be a discriminatory act for a public accommodation to direct, by signage or otherwise, persons to which restroom or locker room they may use and which is available to them based on actual biology, and may take all necessary steps to enforce those directions. After all, it might be discrimination for a place of public accommodation (from a school to a restaurant) to tell a person they cannot use any restroom because they have a certain sexual orientation, or gender identity. But it is not discrimination for the public accommodation to tell that person WHICH of the restrooms or locker rooms owned by that place they can use. It is not discrimination for example, to tell a man who thinks he is a woman that he cannot walk into the womens' locker room, naked or clothed, when there are women customers showering in there, but has to use the mens' locker room if he wants to use one. Government has absolutely no right to tell any place otherwise. And people have no right to choose WHICH public restroom they get to use. It is not discriminatory to tell them that they do not have that right. It is not discrimination to tell a biological man that he cannot go into a womens' restroom or locker room, or vice versa.

5. HB4192 can and should be amended to go so far as to provide that signage for restrooms and locker rooms in places of public accommodation directing usage by gender are presumed to be based on actual biology.

6. If HB 4192 passes, there needs to be accompanying legislation, by amendment or separate, mandating places of public accommodation to conspicuously place signage marking all public restrooms as "Men", "Women", or "Unisex", or analogous language, and all public locker rooms as "Men" or "Women" or analogous language.

The obvious facts making all of this essential in light of HB4192 are the actual and true biological and other differences between the male and female genders, and the ABSOLUTE right of all citizens to have access to public restrooms and locker rooms that are exclusively for their gender only, so that there is ABSOLUTELY NO chance or risk whatsoever that any person will encounter a person of the opposite actual biological sex in any such place without legal recourse. And, it is ludicrous to try to create legal liability against places of public accommodation for taking steps to physically protect their customers and users, and/or give them proper notices and warnings.

It is equally ludicrous for anyone to argue that if the bill passes, there are not likely to be

many such incidents. One such incident is too many, for the one person who is victimized by it. And if the bill passes, how can any person even enter such public accommodations and be guaranteed that they will not become a vicitim?

Without the above amendments, HB4192 is unconstitutionally discriminatory against all citizens who have a right to use of public accommodations with restrooms exclusively for their gender, and would open the State of Michigan to probably hundreds of billions of dollars in liability for such unconstitutional discrimination and failing to provide proper public accommodations for all its citizens. Each and every citizen and visitor would have legal standing to file a multi-million lawsuit for discrimination, and also for invasion of privacy if they were the victim of an actual incident.

The best course is to withdraw HB 4192, but if it is to proceed, the above amendments are necessary.

Sincerely,

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Cc House Judiciary Committee, Reps. Lipton, Lisa Brown, Constan, Corriveau, Coulouris, Kandrevas, Bettie Scott, Warren, Schuitmaker, Amach, Haveman, Rick Jones, Kowall, Rocca, McDowell (my district)