



Inclusion of Sexual Orientation and Gender Identity/Expression in the Elliott-Larsen Civil Rights Act

House Commerce Committee: 12/3/2014

Chairman Foster and Commerce Committee members, thank you for hearing my testimony today. My name is Ryan Cowmeadow and I am the Advocacy Manager at the Area Agency on Aging 1-B (AAA 1-B). The AAA 1-B provides home and community based services in Livingston, Macomb, Monroe, Oakland, St. Clair and Washtenaw Counties. We use a person-centered approach that respects the choice, dignity and self-worth of the participants we serve. In October the AAA 1-B conducted an issue analysis exploring the inclusion of sexual orientation and gender identity/expression in the Elliott-Larsen Civil Rights Act and I would like to provide you with an older adult perspective on why it is key to add such protections.

Best estimates of the lesbian, gay, bisexual and transgender (LGBT) population in Michigan based upon 2010 U.S. Census data range between 223,000 and 285,000 individuals. These population estimates are equivalent to that of Michigan's Asian population in 2010. When applying this same methodology to 2013 census estimates, we find that there are likely up to 52,000 LGBT adults over age 65 who call Michigan home. For perspective, this number is comparable to the entire population of Ypsilanti, Battle Creek or Saginaw, Michigan.

In the United States, 80% of long-term care for older Americans is provided by family caregivers such as spouses, children and other relatives.¹ We know that LGBT elders are twice as likely to be single, twice as likely to live alone and three-four times as likely to not have children when compared to their heterosexual counterparts. This means that many LGBT older adults will need to rely heavily on the professional long-term care system to meet their needs as they age.

Research consistently shows that LGBT older adults have significant concerns about accessing professional long-term care services, and rightfully so. The report, *LGBT Older Adults in Long-Term Care Facilities*² conducted by the National Senior Citizen Law Center finds that not only are LGBT residents concerned about long-term care settings, but they also have experienced significant discrimination. The report surveyed 769 individuals nationwide who identified as LGBT older adults in long-term care, family members or friends, social service providers or legal service providers. Out of the 769 individual surveyed, 43% reported instances of discrimination or mistreatment of LGBT elders in long-term care settings. Common areas of discrimination experienced include being out of the closet and vulnerable; experiencing verbal or physical harassment by other residents and staff; staff refusal to accept a same-sex partner as the medical power of attorney; staff refusal to refer to or use a preferred pronoun; staff refusal to

¹ <http://www.aarp.org/relationships/family/info-04-2011/biggest-issues-facing-older-lgbt-americans.html>

² <http://nwnetwork.org/wp-content/uploads/2012/08/2010-NSCLC-LGBT-Older-Adults-in-Long-Term-Care-Survey-Report2.pdf>

provide basic services or care; failure to provide proper medical care; abrupt or attempted discharge; or, the refusal to admit or re-admit LGBT patients.

There are Federal Nursing Home Regulations through the Federal Nursing Home Reform Act which provide rights and protections to LGBT elders however as the National Gay and Lesbian Task Force point out, "federal regulations against anti-LGBT bias have never been enforced."³

As such, the Area Agency on Aging 1-B finds that embedding protections for sexual orientation and gender identity/expression in employment, housing and public services and accommodations in state law is in direct alignment with a person-centered treatment philosophy, offers LGBT individuals of all ages, dignity, respect and a greater quality of life and offers a clear path of recourse and remedy for anti-LGBT discrimination in long-term care as well as other housing, employment and public services or accommodations.

The AAA 1-B asks for your support to include both sexual orientation and gender identity/expression in any amendments to the Elliott-Larsen Civil rights Act.

Thank you for your time.

Respectfully submitted by:
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³ Grant, J. M. (2010). *Outing Age 2010: Public policy issues affecting lesbian, gay, bisexual and transgender elders*. Washington, DC: The National Gay and Lesbian Task Force

Issue Analysis:

Inclusion of Sexual Orientation and Gender Identity or Expression as Protected Persons under the Elliott-Larsen Civil Rights Act

October

2014

At the request of the LGBT Older Adult Coalition, the Area Agency on Aging 1-B completed the following analysis which presents both supportive and opposing arguments for the inclusion of sexual orientation and gender identity/ expression in the Elliot-Larsen Civil Rights Act (ELCRA). This analysis concludes with the recommended position of the AAA 1-B reviewed and approved by the AAA 1-B Advisory Council and Board of Directors.



Area Agency on Aging 1-B Position

Adopted Position:

The Area Agency on Aging 1-B (AAA 1-B) works to enhance the lives of older adults and adults with disabilities in Livingston, Macomb, Monroe, Oakland, St. Clair and Washtenaw Counties. The AAA 1-B emphasizes a person-centered philosophy which values and respects the interests, needs, wishes and lifestyle choices of the individuals served. As the AAA 1-B covers nearly 30% of the state's older adult population with over 620,000 residing in the six county service region, it stands to reason that there are thousands of older LGBT Michigianian's whom call the AAA 1-B service region home. As evidenced by the Michigan Department of Civil Rights report it also stands to reason that a majority of these elders have experienced discrimination based upon their sexual orientation or gender identity/expression. Support for embedding protections for sexual orientation and gender identity/expression in employment, housing and public accommodations in state law is in direct alignment with a person-centered philosophy and offers LGBT elders dignity, respect and a greater quality of life.

As such, the Area Agency on Aging 1-B supports the inclusion of both sexual orientation and gender identity/expression in the Elliot-Larsen Civil Rights Act.

Inclusion of Sexual Orientation and Gender Identity or Expression as Protected Persons under the Elliot Larsen Civil Rights Act

**Legislative Analysis: SB: 1053
October 2014**

The Lesbian, Gay, Bisexual and Transgender (LGBT) Older Adult Coalition is a collaboration of people and organizations in southeastern Michigan who are working to establish effective programs and services for lesbian, gay, bisexual and transgender older adults. Formed in 2010, the mission of the LGBT Older Adult Coalition is to “build awareness and promote change so that LGBT older adults may age with dignity and authenticity¹.” The Area Agency on Aging 1-B (AAA 1-B) is represented on the coalition and is joined by the American Civil Liberties Union (ACLU) of Michigan, Adult Well-Being Services, Affirmations, Citizens for Better Care, The Jim Toy Community Center, Michigan Office of Services to the Aging, Oakland Family Services, Optimal Care Inc., and The Village of Redford.

At the request of the LGBT Older Adult Coalition, the AAA 1-B completed the following analysis which presents both supportive and opposing arguments for the inclusion of sexual orientation and gender identity/ expression in the Elliot-Larsen Civil Rights Act (ELCRA). This analysis concludes with a recommended position for the AAA 1-B to guide advocacy activity on LGT issues.

Background:

Written and passed in 1976 by the Michigan Legislature and signed into law on January 13, 1977 by Governor Milliken, the ELCRA defines civil rights; prohibits discriminatory practices, policies and customs in the exercise of those rights based upon protected classes; preserves confidentiality of records regarding arrest, detention, or other disposition in which a conviction does not result; prescribes the powers and duties of the Civil Rights Commission and the Department of Civil Rights; and provides remedies and penalties for violating the Act.

The ELCRA defines civil rights as, “the opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service and educational facilities free from discrimination based upon a person’s protected class including religion, race, color, national origin, age, sex, height, weight, familial status or marital status.”

The ELCRA has been amended previously to add protected classes and most recently in 2009 to increase protections for pregnant workers².

¹ <http://lgbtolderadults.com/about/>

² <http://www.employmentlawdaily.com/index.php/2010/01/20/michigan-strengthens-anti-discrimination-protections-for-pregnant-employees/>

S.B. 1053 introduced in September of 2014 seeks to include sexual orientation and gender identity/ expression as a protected class in the ELCRA. Sexual Orientation as defined by SB 1053 means, “having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation.” Gender Identity or Expression as defined by SB 1053 means, “having or being perceived as having a gender-related self-identity or expression whether or not associated with an individual’s assigned sex at birth.”

Previous unsuccessful attempts have been made to include sexual orientation in the ELCRA beginning with HB. 5000 introduced by Rep. Jim Dressell (R-Holland) in 1983³. Subsequent legislation has been introduced in nearly every legislative session in both the House and Senate to add sexual orientation and gender identity or expression to the ELCRA. No Michigan Legislature has acted to support such legislation.

In the absence of legislation, state entities have undertaken efforts to understand the social and economic impacts of including sexual orientation and gender identity or expression in the ELCRA . In 2013 the Michigan Department of Civil Rights (MDCR) issued the “Report on LGBT Inclusion under Michigan Law with Recommendations for Action.” The report found that “all available evidence shows that discrimination based on sexual orientation or gender identity/expression, (1) exists and is significant, (2) is protected in other states, but not in Michigan, which (3) has direct negative economic effects on Michigan⁴.” The following provides further evidence regarding the findings of the MDCR report:

(1) Discrimination Exists: Based upon 2010 U.S. Census data and methodology from the Williams Institute, in Michigan it is estimated that there are between 223, 896 to 286,504 individuals that identify as lesbian, gay, bisexual or transgender⁵. In 2010 this equated to nearly 3% of Michigan’s total population. As matter of perspective, these numbers are comparable in size to Michigan’s Asian population which numbered 238,199 persons in 2010⁶. When applying this methodology to 2013 U.S. Census estimates of Michigan’s population ages 65 and older, there are as many as 52,000 older adults likely identifying as LGBT.⁷

A 2012 study⁸ conducted by researchers from Michigan State University sampled over 1,000 people statewide who identify as lesbian, gay, bisexual, transgender or queer (LGBTQ) and found that 54.8% of respondents reported experiencing discrimination or harassment based

³ MI Dept. of Civil Rights. *Report on LGBT Inclusion Under Michigan Law with Recommendations for Action*. Lansing: 2013

⁴ MI Dept. of Civil Rights. *Report on LGBT Inclusion Under Michigan Law with Recommendations for Action*. Lansing: 2013 Pg. vii

⁵ Michigan Department of Civil Rights. (2013). *Report on LGBT Inclusion Under Michigan Law*. PG 38

⁶ <http://www.census.gov/2010census/popmap/ipmtext.php?fl=26>

⁷ Source U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits
Last Revised: Tuesday, 08-Jul-2014 06:37:34 EDT

⁸ Morrison, K., & McCornack, S. (2012). *A Statewide Study of LGBTQ attitudes and experiences: Challenges and concerns*. Presented to the Michigan Fairness Forum

upon sexual orientation in their lifetime; 19.3% experience gender expression discrimination and 15.9% reported discrimination on gender identity⁹. Extrapolating to the number of Michigan residents who may be LGBT in 2010, up to 157,004 individuals have likely experienced discrimination or harassment.

Employment discrimination has been reported by 15-43% of LGBT persons in national samples¹⁰. Discrimination may include being overlooked for a position or promotion, fired from a position or wage disparities. An analysis of Michigan 2010 census data conducted by the Williams Institute suggests that men in same-sex relationships earned an average salary of \$35,107 a year and men in heterosexual marriages earned \$53,887 a year¹¹.

Housing discrimination based upon sexual orientation, gender identity, or gender expression is also evident in Michigan. The Fair Housing Centers of Michigan produced the report, "Sexual Orientation and Housing Discrimination in Michigan"¹² in 2007. The report finds that out of 120 paired tests comparing heterosexual and homosexual couples seeking housing, 27% of same-sex couples were offered higher rental rates, were discouraged from renting, or subject to behavior boarding on sexual harassment.

Discrimination in long-term care settings is also prevalent. The report, "LGBT Older Adults in Long-Term Care Facilities: Stories from the Field"¹³ used an online survey to collect the opinions and experiences of LGBT older adults, family members and professionals. 769 individuals responded to the survey and of the total respondents 328 people reported 853 instances of abuse in long-term care settings. Types of abuse reported include harassment by residents and staff; refusal by staff to accept a medical power of attorney; refusal of staff to use a preferred name and/or pronoun; refusal to provide care and wrongful transfer or discharge from the facility.

In the United States 80% of long-term care for older people is provided by family members such as spouses, children and other relatives.¹⁴ Considering that LGBT elders are twice as likely to be single, to live alone, and three to four times as likely to be childless¹⁵ when compared to their heterosexual counterparts, this means many LGBT older adults will need to rely on providers in the professional long-term care system for assistance with their care needs. The following text box provides selected quotes from LGBT older adults, allies and long-term care staff on their experiences with long-term care settings and LGBT treatment.

⁹ Michigan Department of Civil Rights. (2013). *Report on LGBT Inclusion Under Michigan Law*. PG 47

¹⁰ Badgett, M.V.L., Lau, H., Sears, B., & Ho, D. (2007) *Bias in the Workplace: Consistent evidence of sexual orientation and gender identity discrimination*. Los Angeles, CA: The Williams Institute.

¹¹ Romero, A. P., Baumle, A., Badgett, M. V., & Gates, G. L. (2007). *Census Snapshot: Michigan*. Berkley, CA: The Williams Institute.

¹² Fair Housing Centers of Michigan (2007). *Sexual orientation and housing discrimination in Michigan: A Report of Michigan's Fair Housing Centers*.

¹³ http://www.lgbtagingcenter.org/resources/pdfs/NSCLC_LGBT_report.pdf

¹⁴ <http://www.aarp.org/relationships/family/info-04-2011/biggest-issues-facing-older-lgbt-americans.html>

¹⁵ <http://www.aarp.org/relationships/family/info-04-2011/biggest-issues-facing-older-lgbt-americans.html>

LGBT Fears when Facing Long-Term Care

The Report, "LGBT Older Adults in Long-Term Care Facilities: Stories from the Field" highlights the concerns of LGBT older adults as they face institutionalized care. Additionally LGBT allies and care providers share their insights and experiences. The following are quotes from participants in the report.

"Within the next two weeks I will be going into assisted living. Due to my financial situation, I will have to share a room with another man. The thought of going back into the closet is making me ill. Frankly, I'm afraid of telling anyone that I'm gay." – Anonymous, 73 years old, Sylmar, CA

"A gay couple moved into my mother's facility. The residents kept talking about: "Which one is the man and which is the woman?" they moved out a couple of months later." –Frances C., Pima, AZ

"Several Residents' offhand comments about gays and fags make me (and any gays) uncomfortable." – Bob C., 88, LGBT Friend, retired from Ford Motor Company, Ann Arbor, MI

"Two years ago, Jack was in a Skilled Nursing Facility (SNF) for some 16 days before he was finally taken in for a shower by a staff member with empathy, and my "screaming" insistence. This time, I check him out of the SNF (which is in the same building in which we have an independent living apartment) and bring him up to the apartment where he can shower and shave without the assistance of an aid who may or may not be "comfortable" helping a gay man bathe." –John D., 83, San Francisco, CA

"Only a few residents have been out in the nursing homes where I have worked, and I have worked in nursing homes for more than 25 years. For those perceived as LGBT there are comments, whispers and gossip about the residents amongst staff and other residents." –Mary Blanchett, Licensed Nursing Home Administrator

(2) Protections Exist in other States: The American Civil Liberties Union (ACLU) reports that there are 19 states with employment, housing and public accommodations non-discrimination laws which cover sexual orientation and gender identity (CA, CO, CT, DC, DE, HI, IA, IL, MA, MD, ME, MN, NJ, NM, NV, OR, RI, VT, WA) and 3 additional states which offer protections based upon sexual orientation only (NH, NY, WI).¹⁶

(3) Discrimination has Negative Impacts on the Economy of Michigan: Research conducted by the Michigan Department of Civil Rights indicates that people are leaving Michigan for reasons related to discrimination. A survey of 449 graduate and professional students at Michigan's top colleges and universities explored whether or not the students planned on staying in Michigan post graduation. The findings of the survey are outlined in the following table.

¹⁶ <https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map>

Plans after Graduation	Heterosexual Respondents (N=383)	LGB Respondents (N=49)
Stay in Michigan	27%	8%
Maybe stay in Michigan	45%	37%
Will not stay in Michigan	28%	55%

Respondents in the above mentioned study were asked to list the factors impacting their decisions regarding whether to stay in or leave Michigan. Both the LGB and Heterosexual populations cited job opportunities and job security as their top factors. Interestingly the LGB population ranked “state laws” as the third most important factor when making a decision to stay or leave Michigan whereas the heterosexual population ranked proximity to family/friends as the third most important factor. The Department of Civil Rights surveyed the LGB participants planning on leaving Michigan to anticipate where they would seek a job. Respondents indicated California, Illinois, Washington DC, Massachusetts, New York, New Hampshire, Vermont and Canada, all jurisdictions with protections for LGBT workers.

Given that Michigan is the only state in the union which lost aggregate population in the 2010 census, the loss of educated and motivated graduates to other states has negative impacts on Michigan’s economy.

Whether LGBT persons are being let go from employment or they are voluntarily leaving positions to avoid discrimination, this turn-over poses a significant cost to businesses. Estimates of turn-over related expenses to businesses range between 93% and 200% of the departing employee’s annual salary¹⁷. This impacts the economy of Michigan through lost wages and tax revenue. Additionally, “workers who lose employment participate in public assistance programs often paid for by the state. When employees lose income and insurance coverage, they must rely on state assistance programs to replace their income and insurance”¹⁸ such as unemployment insurance and Medicaid.

It is important to note that in some instances the state does provide policy direction regarding the inclusion of LGBT persons. For example in its Operating Standards for Service Programs the Michigan Office of Services to the Aging requires that, “programs must not discriminate against any employee, applicant for employment or recipient of service because of race, color, religion, national origin, age, sex, sexual orientation, height, weight, or marital status.” Thus all participants utilizing, and programs and services which operate by using funding from the Office of Services to the Aging, including Area Agencies on Aging and the network of service providing agencies are subject to these protections.

The Area Agency on Aging 1-B extends protections further to include both gender identity and gender expression through the AAA 1-B employee manual non-discrimination/non-harassment policy and through the Request for Fund Proposal contracting process.

¹⁷ Hewlett, S. A., & Sumberg, K. (2011). *The power of out*. New York, NY: Center for work-life policy.

¹⁸ Michigan Department of Civil Rights. (2013). *Report on LGBT Inclusion Under Michigan Law*. PG 80

The inclusion of sexual orientation and gender identity/ expression in the ELCRA is receiving consideration from both parties in the legislature, however after reviewing bills introduced in both the House and Senate by Democrats and one circulated for co-sponsors in the House by Rep. Frank Foster (R-Petoskey), debate has risen to consider how amending the ELCRA could impact religious freedoms.

The U.S. Supreme Court decision in the case of *Burwell vs. Hobby Lobby* delivered on June 30, 2014 ruled that the federal mandate of the Patient Protection and Affordable Care Act (ACA) to provide certain types of contraceptive coverage to female employees violated the religious freedom of the employer, Hobby Lobby under the Religious Freedom Restoration Act of 1993.

The aforementioned U.S. Supreme Court finding has prompted debate about the “importance of giving religious employers latitude to exercise their faith.”¹⁹ Such latitude may include choosing not to serve individuals that identify as LGBT, or in the arena of employment, this applies to an employer’s ability to hire or fire an individual if their sexual orientation or gender identity/expression is incompatible with the religious beliefs of the employer.

A solution to balance religious freedom protections and civil rights protections for persons based upon sexual orientation or gender identity/expression comes in the form of a Religious Freedom Restoration Act. Such an act could be introduced as companion legislation to any amendments to the ELCRA.

Opponents of such an inclusion are concerned that a potential religious exemption through a Michigan version of the Religious Freedom Restoration Act in or in concert with the ELRA would eviscerate the intent of the legislation allowing people to be able to use religion to discriminate against any current or future protected class. Senator Rebecca Warren (D-Ann Arbor) who introduced S.B. 1053 is quoted, “I think the concern we have with tying it [the inclusion of sexual orientation and gender identity/expression in the ELCRA] with any kind of religious exemption is that we don’t want people to be able to use religion to discriminate. The ELCRA is a very well-written piece of legislation and there’s no possible way to do that kind of an amendment in the ELCRA [including a religious exemption] that wouldn’t apply to every category. So you can’t...use religion to discriminate against women, use religion to discriminate against people of color.”²⁰

Supporting Arguments:

Dignity and Respect for a Vulnerable Population: LGBT adults age 65 and older today may face discrimination based both upon age and sexual orientation or gender identity/expression. Individuals age 65 and older who identified as LGBT came of age in an era when homosexuality

¹⁹ <http://www.theatlantic.com/politics/archive/2014/07/how-hobby-lobby-split-the-left-and-set-back-gay-rights/374721/>

²⁰ GONGWER Volume #53, Report #179, Article #2 – Thursday, September 11, 2014 *Warren Introduces Elliott-Larsen Change in Senate*

was considered a crime and a mental illness. It was not until 1973 that the American Psychiatric Association removed homosexuality from the Diagnostic and Statistical Manual of Mental Disorders.²¹

Levels of discrimination vary within the LGBT community. Emily Dievendorf of Equality Michigan states, "The trans community is the most discriminated against in the LGBT community."²² Results of the 2011 National Transgender Discrimination Survey found that in a sample of 6,456 transgender respondents representing all 50 states, 63% of respondents had experienced a "serious act of discrimination that would have a major impact on a person's quality of life and ability to sustain themselves financially or emotionally."²³ These acts include: lost job due to bias; eviction due to bias; school/bullying/harassment so severe the respondent had to drop out; teacher bullying; physical assault due to bias; sexual assault due to bias; homelessness because of gender identity/expression; lost relationship with partner or children due to gender identity/expression; denial of medical service due to bias; and, incarceration due to gender identity/bias. Twenty-Three percent of respondents reported being impacted by at least three such acts.

Supporters in favor of updating the ELCRA are concerned that the absence of gender identity or expression leaves members of the trans community at a great disadvantage. Supporters cite that although federal law protects persons against sex discrimination in employment, and transgender individuals have used this as a means of recourse for employment issues it does not protect trans persons in housing or public accommodations.

Public Opinion: The inclusion of sexual orientation and gender identity/expression has many diverse supporters representing both political parties, the public opinion of Michigianians According to a 2010 public opinion poll 65% of Michigan voters are in support of a proposal to ban discrimination based upon sexual orientation and gender identity or expression²⁴. In 2013 the Detroit News commissioned a state-wide poll of 600 likely Michigan voters²⁵ which found that 74% of likely voters support making it illegal to fire or deny housing to someone who is gay, lesbian, or transgender. Less than 18% said they oppose adding such protections to the ELCRA. These two polls suggest a majority of Michigan voters are in support of amending the ELCRA to include sexual orientation and gender identity or expression, and that there is an increase in support for such an amendment over the course of three years.

Businesses Support the Inclusion of Sexual Orientation and Gender Identity/Expression in Anti-Discrimination Laws: The Michigan Competitive Workforce Coalition²⁶ (MCWC) is a partnership of business leaders representing 55 companies large and small, associations and

²¹ http://psychology.ucdavis.edu/faculty_sites/rainbow/html/facts_mental_health.html

²² http://www.mlive.com/lansing-news/index.ssf/2014/09/lgb_not_t_bolger_questions_nee.html

²³ http://www.transequality.org/PDFs/NTDS_Report.pdf PG. 8

²⁴ Quinlan, A. & Baumann, A., (2011). Michigan voters back ban on LGBT discrimination survey findings.

²⁵ <http://www.detroitnews.com/story/news/politics/michigan/2014/09/10/bolger-resists-bills-to-protect-gays-lesbians-/15429401/>

²⁶ <http://www.michcwc.org/#landing>

chambers of commerce that have come together around the goal of updating the Michigan ELCRA to include sexual orientation and gender identity. Founding members include AT&T, Google, Blue Cross Blue Shield of Michigan, Consumers Energy, the Dow Chemical Company, Herman Miller, Steelcase, Strategic Staffing Solutions and the Whirlpool Corporation.

The MCWC provides the following rationale:

“It is right because everyone in Michigan, whatever race, gender, religion, physical characteristics, sexual orientation or gender identity deserves to be treated fairly and equally under the law. It is smart because Michigan’s continued economic growth relies on keeping and attracting talented hard working, determined people... Michiganders who take pride in their contributions and invest their time and talents in their work and communities. It is the time because we have already waited too long. Gay, lesbian, bisexual and transgender Michiganders know this. Voters understand this. Economic growth needs this. And simple fairness requires this.”

Jim Murray, President of AT&T Michigan offers that, “Rebuilding Michigan’s economy means building Michigan’s reputation as a state known for treating all people fairly, recognizing talent, rewarding hard work and a shared commitment to doing what it takes to strengthen our economy and attract jobs.”

Fortune magazine's 500 largest publicly-traded companies, which collectively employ nearly 25 million people, have made significant strides in advancing equal protections and benefits for their lesbian, gay, bisexual and transgender employees. The more successful the company (and the higher the rank on the Fortune list), the more likely the company is to have these protections and benefits in place.

Fortune 500:

- the vast majority (91 percent) prohibit discrimination on the basis of sexual orientation,
- more than a third (61 percent) prohibit discrimination based on gender identity, compared to just three in 2000, and
- the majority (62 percent) provide domestic partner health insurance benefits to their employees.

Unions and Civil Rights Organizations Support Equality in Michigan: Karla Swift, President and CEO of the Michigan AFL-CIO which co-sponsored the 25th Anniversary Michigan Pride rally at the state capitol shared in 2014, “I don’t always agree with corporate executives, but in this case, I couldn’t agree more. Discrimination is not only unfair and un-American, it’s anti-competitive. It costs companies real money when they reject the talents of a potential worker just because he or she is gay, a person of color, or from a different country.²⁷”

²⁷ <http://www.detroitnews.com/article/20140917/OPINION01/309170004>

The American Federation of Teachers (AFT), United Food and Commercial Workers, United Auto Workers and the Michigan Education Association have LGBT anti-discrimination clauses in more than 100 contracts statewide.

The Detroit Chapter of the National Association for the Advancement of Colored People (NAACP), the Michigan State Conference NAACP and the Urban Leagues of Detroit and Southeast Michigan join the ACLU and Equality Michigan in showing their support for the inclusion of sexual orientation and gender identity or expression in the ELCRA. Michigan State Conference NAACP President Yvonne White shares, “we stand in defense of justice for all, and will work alongside our brothers and sisters in the LGBT community to ensure that every citizen has equal protection under the law.”

Increasing Protections for Others: The inclusion of sexual orientation, gender identity and gender expression as protected classes in the ELCRA increases protections for all Michiganians, not just those who identify as lesbian, gay, bisexual or transgender (LGBT). This inclusion would also protect heterosexuals who may be wrongly perceived as LGBT from housing, employment and public service discrimination.

Opposing Arguments:

Striking a Balance between Gay Rights and Religious Liberty: Michigan House Speaker Jase Bolger issued a statement indicating that he is concerned that affording full protections to LGBT individuals may force someone to violate his or her religious beliefs. As such, the House Speaker said he is exploring the idea of a state version of the federal Religious Freedom Restoration Act that would be moved with an amendment to the ELCRA adding sexual orientation as a protected class²⁸.

The Michigan Catholic Conference, the church’s lobbying arm, says “all 21 states that ban discrimination based upon sexual orientation have religious liberty protections. I would consider that the mainstream approach” said spokesman Dave Maluchnik. He said Democratic bills as introduced could possibly be “used as a sword against religious persons or organizations rather than a shield against discrimination.”²⁹

“The more you enumerate, the more you eliminate:”³⁰ A 2012 Equal Employment Opportunity Commission (EEOC) decision which declared that anti-transgender bias is a form of sex discrimination covered under federal law by Title VII of the 1964 Civil Rights Act, ruled that gender identity/expression is already a protected class and thus does not need to be included in the ELCRA. This is evidenced by successful federal lawsuits brought by transgender individuals citing discrimination based upon sex through the EEOC. As the ELCRA already includes sex as a

²⁸ http://www.mlive.com/lansing-news/index.ssf/2014/09/michigan_may_pair_gay_rights_a.html#incart_river_politics

²⁹ http://article.wn.com/view/2014/09/21/Barring_antigay_discrimination_tenuous_in_Lansing/

³⁰ http://www.mlive.com/lansing-news/index.ssf/2014/09/lgb_not_t_bolger_questions_nee.html

protected class, further provisions are seen as redundant and concern exists as quoted by House Speaker Bolger that “the more you enumerate, the more you eliminate. When we talk about achieving the right policy, sometimes in political expediency you list more things and the unintended consequence is that you have eliminated other things.”³¹

Undue burden on Business: During public testimony held by the Michigan Department of Civil Rights a concern rose that including sexual orientation and gender identity or expression may cause an undue burden on businesses with terminated employees or overlooked candidates claiming discrimination based upon sexual orientation or gender identity/expression.

Recommended Position:

The Area Agency on Aging 1-B (AAA 1-B) works to enhance the lives of older adults and adults with disabilities in Livingston, Macomb, Monroe, Oakland, St. Clair and Washtenaw Counties. The AAA 1-B emphasizes a person-centered philosophy which values and respects the interests, needs, wishes and lifestyle choices of the individuals served. As the AAA 1-B covers nearly 30% of the state's older adult population with over 620,000 residing in the six county service region, it stands to reason that there are thousands of older LGBT Michiganian's whom call the AAA 1-B service region home. As evidenced by the Michigan Department of Civil Rights report it also stands to reason that a majority of these elders have experienced discrimination based upon their sexual orientation or gender identity/expression. Support for embedding protections for sexual orientation and gender identity/expression in employment, housing and public accommodations in state law is in direct alignment with a person-centered philosophy and offers LGBT elders dignity, respect and a greater quality of life.

As such, the Area Agency on Aging 1-B supports the inclusion of both sexual orientation and gender identity/expression in the Elliot-Larsen Civil Rights Act.

³¹ http://www.mlive.com/lansing-news/index.ssf/2014/09/lgb_not_t_bolger_questions_nee.html