

Discrimination Threatens Michigan's Future Economic Growth

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Written Testimony in Support of House Bill No. 4192:
Legislation to amend the Elliott-Larsen Civil Rights Act to Include
Sexual Orientation and Gender Identity

Thank you for inviting me to testify on this important civil rights issue. My name is Peter Hammer. I have a J.D. in law and a Ph.D. in economics from the University of Michigan. I am a Professor of Law and Director of the Damon J. Keith Center for Civil Rights at Wayne State University Law School. I teach courses in Contracts, Health Law and Health Economics, and will be introducing a new course this year in Community Economic Development.

My testimony is straightforward. Discrimination is bad for business and bad for economic growth. The Michigan economy is in dire straits. Everyone understands that Michigan faces stiff economic competition from other states in terms of tax policy and business incentives. To lure business, Michigan must match or beat the offers that companies get from states like Ohio, Illinois, Tennessee or South Carolina. If the incentives are more attractive in other states, then business will locate there instead of here. No one thinks twice about the logic or dynamics of this competitive process.

What is less appreciated, but no less true, is that the economic climate also includes the social, political and cultural environment of a State, not just its tax incentives and subsidies. (Out & Equal Workplace Advocates and Levi Strauss & Co. 2007). State law, in turn, plays an important role in shaping the social and cultural environment. Law has both a prescriptive voice and an expressive voice. The expressive voice speaks to the norms values and expectations of the community. Prohibitions against discrimination, protections of rights and laws that create an environment fostering tolerance, diversity and respect all create an environment that is more conducive to attracting the type of businesses that will be vital to Michigan's future economic growth – bio tech, life sciences, advanced automotive engineering and green energy.

We live in a globalized economy. The hallmark of globalization is increased mobility in capital markets and high-end labor markets. Businesses have fluid choices about where they locate. Individuals, particularly those with substantial human capital, can choose where they want to work and live. In this competitive process, social-political environments that are perceived as hostile or intolerant are avoided, while social-political environments that are perceived as tolerant and accepting are pursued. This is true for individuals, it is true for businesses and it is true for entire states. Massachusetts, Vermont, New York and Iowa benefit from this competitive process and their progressive policies. Other states with less progressive policies and less tolerant environments lose out in the struggle to lure new businesses and high

tech employees.

Michigan faces twin deficits. It faces a mounting economic deficit. It also faces a mounting political and cultural deficit, where the state is increasingly perceived as a hostile and intolerant environment, and where values of openness and diversity are not cultivated. The economic woes are well known. Michigan has the highest unemployment rate in the country. The State is losing its traditional manufacturing base. These problems are structural and will not be solved quickly or easily. It will take sustained and coordinated efforts on many fronts. One of these fronts will be creating a more open social and cultural environment for businesses and individuals.

Michigan's political and cultural deficit presents a serious challenge to the state. In recent years, Michigan has developed a reputation for being increasingly intolerant. (L. Berman 2007; P.J. Huffstutter 2007). Many state policies are hostile to the very forms of cultural and social diversity that can attract and retain high tech businesses and employees. This reputation did not develop over night. It has been the product of a number of acts of omission and commission. The fact that there is no State prohibition against discrimination on the basis of sexual orientation and gender identity is one such factor. In addition, Michigan affords no hate crimes protection to members of the LGBT community. Michigan adopted one of the broadest bans in the country prohibiting same sex marriage, intentionally drafted to outlaw even the possibility of any form of civil union. The State Attorney General turned what was supposed to be a shield into a sword and held that the marriage amendment prohibited state employers from offering domestic partnership benefits to same sex couples. Finally, in a judicial opinion that was widely criticized in the legal community, the Michigan Supreme Court went further than any court in the country using the marriage amendment to deny a wide range of possible LGBT rights. (Case Note, Harvard Law Review 2009).

The hostility to diversity is not confined to the LGBT community. It includes issues of race as well. When the University of Michigan fought to defend affirmative action and the value of diversity in the US Supreme Court, the State gained substantial reputational benefits. This social and political capital was squandered, however, just a few years later when Michigan joined ranks as one of only a handful of states to adopt a constitutional amendment outlawing any form of affirmative action.

It is common to rank states in terms of their tax policies or their business climates. These are not the only type rankings that influence business decisions. There are social, political and cultural rankings as well. Unfortunately, Michigan does not rate very well on these indices. In 2006, for example, Michigan ranked third highest in the country in terms of FBI statistics for hate crimes. (Mediamouse 2007). "Mapping our Rights" is an organization that provides a national ranking of states in terms of their openness and policies on reproductive health, gender-based and LGBT-based rights. Michigan ranks 42nd in this survey - 8 from the bottom. (Mapping Our Rights 2009). Finally, researchers at the University of Chicago Law School conducted a study rating the Supreme Court in every state. (S. Choi, M. Gulati, and E. Posner 2008). The Michigan Supreme Court rated 42nd in terms of opinion quality, 40th in terms of

productivity and 50th overall. Policy analysts always joke that Mississippi rates at the bottom of important state indices for education and infrastructure investment, making Mississippi the butt of many comparative jokes. Michigan may soon well risk being known as the Mississippi of civil and political rights.

This does not have to be the case. Progress can be made on both the economic and the social fronts. Indeed, the two are interconnected. Progress on the social and political front will be essential to making sustained progress on the economic front. The economy is a complex ecosystem. Extending the prohibition against discrimination to include sexual orientation and gender identity is part of the economic solution. Michigan is consciously targeting high tech industries as the primary engine for its future growth. But these are exactly the type of business that are sensitive to a state's social and cultural environment, inclusive of LGBT rights. A state's position on these social issues is taken as a deeper signal of its commitment to openness and diversity overall. Diversity and tolerance, in turn, are critical to cultivating an environment conducive to the growth of what Richard Florida calls the "creative class." (R. Florida and G. Gates 2001; R. Florida 2002; R. Florida 2005). Protecting rights is just good business.

Michigan is fighting for its future. In this fight, Michigan is in fierce competition with other states. At times, this competition takes the form of offering special tax breaks and subsidies. At other times, it involves making the necessary investments in roads and infrastructure to secure the prospects of long term growth. Michigan must also create a positive social and cultural environment to attract and retain the workers and businesses that will lay the foundation for its future growth. The social and cultural deficit Michigan has created in recent years is as serious as its economic deficit. The economic problems cannot be solved without paying greater attention to these social issues as well.

Passing House Bill No. 4192 to amend the Elliott-Larsen Civil Rights Act to include sexual orientation and gender identity would be a constructive first step in this process.

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