

**Michigan House of Representatives  
Judiciary Committee  
Hearing on House Bill 5958  
December 4, 2014**

**Testimony Submitted by:**



Mr. Chairman. Members of the Committee. Good Morning.

I'm Leslee Fritz, Deputy Director of the Michigan Department of Civil Rights. I am joined by our Director of Law and Policy, Dan Levy. We are here to express concern about the perceived need for a Michigan Religious Freedom Restoration Act (RFRA), and opposition to the bill in its present form.

Our statement will be brief out of respect to the many others who wish to address this Committee today.

The Michigan Civil Rights Commission and the Michigan Department of Civil Rights have been strong supporters of the constitutional guarantee of religious freedom for all Americans, regardless of their faith, since our creation 50 years ago. We believe government should, to the greatest extent possible, accommodate the religious beliefs and practices of each of its citizens. However, a religious accommodation can never be used to justify harming the rights of others.

Religious freedom, in short, protects the right of every person to practice their religion, as long as doing so neither imposes that religious view on others, nor inflicts a greater harm upon the rights of others.

Historically, these constitutional guarantees have meant that any law that burdens the free exercise of religion must meet a strict scrutiny test that requires the law to both further a compelling government interest and be the least restrictive way of furthering that interest. When Congress observed that the courts were weakening this standard in the 1980s and 1990s, they passed the federal RFRA. RFRA was intended to reinstate the strict scrutiny test.

Because we are not aware of any effort by Michigan Courts to strip the strict scrutiny test from Michigan jurisprudence, we see no need for a state law that reestablishes it.

More concerning, the bill as proposed expands the language used in the federal RFRA.

For example, Section 6, subsection 2 has no parallel in federal law. It requires that the Michigan law be construed broadly and to the “maximum extent permitted”. This language appears to require that whenever this law conflicts with another, this one wins without permitting courts to weigh the considerations that usually apply to such conflicts.

In the next subsection this bill changes the language of the federal law from “Nothing in this chapter shall be construed to authorize any government to burden any religious belief” into nothing shall be construed to “authorize any burden on any religious belief.” The removal of those two simple words seems to expand the bill’s authority beyond government action to private and other entities – a significant change in scope. If that is not the intent, then there is no reason for the change.

These, and other additional sections, make the Michigan version far more expansive than its federal counterpart.

The biggest cause for the concerns of the Commission and Department, however, isn’t limited to the bill’s language, it stems from its stated purpose.

The bill’s sponsor has said that the goal of this legislation is to offset possible changes to the anti-discrimination provisions of Michigan’s primary civil rights law – the Elliott-Larsen Civil Rights Act. We oppose ANY attempt to weaken these fundamental anti-discrimination provisions, including any attempt to claim that religion can be used as a defense to public conduct that would otherwise be illegal discrimination.

Michigan and federal constitutional protections already provide for the ability to make decisions in favor of those who share common beliefs when religious matters are involved. Anti-discrimination laws like Elliott-Larsen do not apply to a house of worship’s hiring and firing of those engaged in ministry, nor to who is served by their religious activities. Outside of ministerial matters, religion cannot be used to justify illegal discrimination. The dividing line between acts that are ministerially related and those that are not is a fact based question properly left to the courts, not one that can be defined by statute. We should not support a rule of law that says that firing someone, or denying them service, is only illegal for the non-religious.

By acknowledging that this bill was specifically introduced to limit the application of anti-discrimination provisions, the sponsor would seem to imply that this bill is intended to create a religious exemption for even the civil rights protections we have collectively come to rely upon and all but take for granted.

Therefore, the Civil Rights Commission, at their meeting last week, “reiterate[d] its support of the constitutional protection of religious liberty, and of not placing any substantial and undue burden on any person's religious exercise.” The commission also asserted that this must be done “without

lessening any existing civil rights protection.” Because the bill presented does lessen such protections, we must oppose it.

I recognize that many of our concerns expressed today are based on the interpreted intent of the sponsor and supporters of this bill. If you believe our interpretation is incorrect, there is a simple way to erase any doubt or confusion. Amend the legislation to include language like that in Texas which clarifies that the law “does not establish or eliminate a defense to a civil action or criminal prosecution under a federal or state [or local] civil rights law.”

This simple amendment would ensure that no civil rights protections are weakened, intentionally or unintentionally, by passage of this bill.

Thank you. We would be happy to answer any questions you may have.



## RESOLUTION OF THE MICHIGAN CIVIL RIGHTS COMMISSION

### WHEREAS:

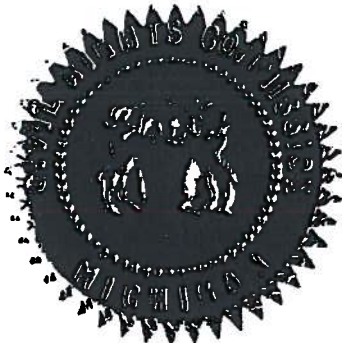
In view of ongoing legislative discussions currently taking place about actions that may be taken before the end of the current session, the Michigan Civil Rights Commission reiterates recommendation one of the "*Report on LGBT Inclusion Under Michigan Law*," prepared by the Department of Civil Rights and adopted by this Commission on March 25, 2013:

"The Commission should publicly support the expansion of federal, state, and local laws that protect people from discrimination on the basis of sexual orientation and gender identity/expression in employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities. Specifically, the Department should recommend that the Michigan legislature expand the ELCRA to include sexual orientation and gender identity/expression or support legislation with comparable policy implications."

### THEREFORE BE IT RESOLVED:

The Commission urges the Michigan Legislature to present a bill to the governor that protects all residents and visitors in Michigan by amending the Elliott Larsen Civil Rights Act to add sexual orientation and gender identity, and we urge the governor to sign it.

The Commission also reiterates its support of the constitutional protection of religious liberty, and of not placing any substantial and undue burden on any person's religious exercise, and without lessening any existing civil rights protection.



Adopted the 24<sup>th</sup> day of November, 2014, by the  
MICHIGAN CIVIL RIGHTS COMMISSION