May 2, 2017

Representative Jonathan Kreiss-Tomkins
Chairman, House State Affairs Committee
State Capitol – Room 411
Juneau, Alaska 99801

alaska
FAMILY ACTION | FAMILY COUNCIL

Re: Opposition to HB 184

Dear Rep. Kreiss-Tomkins:

We are writing to express our opposition to House Bill 184:

> "An Act adding to the powers and duties of the State Commission for Human Rights; and relating to and prohibiting discrimination based on sexual orientation or gender identity or expression."

The Alaska Family Council strongly opposes this legislation for the following reasons:

1) HB 184 proposes to add highly subjective, poorly defined, and inappropriate categories to the existing anti-discrimination statute.

2) HB 184 will lead to coercion and punishment for individuals, organizations, and small businesses who simply decline to engage in speech or participate in events that are contrary to their religious beliefs or personal convictions.

3) HB 184 would jeopardize the privacy of individuals using intimate facilities such as locker rooms, showers, and restrooms.

Flawed categories of "sexual orientation" and "gender identity or expression"

Existing law in Alaska (AS 18.80.210) prohibits discrimination based on immutable characteristics (such as race, color, sex); and based on characteristics that may be mutable over time but which nonetheless can be objectively discerned (such as pregnancy, marital status, physical or mental disability, religion).

In contrast, the terms "sexual orientation" and "gender identity or expression" do not describe concrete and verifiable traits, but instead refer to a highly subjective claim of identity. These are relatively novel terms in social discourse, and would have been unrecognizable even a generation or two ago. **HB 184 defines "sexual orientation" as: "heterosexuality, homosexuality, and bisexuality."** But these constituent terms are not further defined, as if their meaning is self-evident. However, we are aware of no other place in Alaska statutes where these words appear.

In the absence of clear definitions in statute, these terms will be interpreted in whatever manner suits the interests of unelected bureaucrats and judges. Clear definitions are crucial in all law, but especially in non-discrimination law. For example, does "homosexuality" most fundamentally describe a psychological disposition, a form of behavior, or both? This distinction is crucial, because there is a world of difference between evaluating a person based on a *behavior* and evaluating a person based on an *innate trait*, such as skin color.

Dr. Paul McHugh (Professor of Psychiatry, Johns Hopkins University School of Medicine) and Dr. Lawrence Mayer (Biostatistics Professor, Arizona State University) have written extensively about the nebulous aspects of these terms:

> "While some people are under the impression that sexual orientation is an innate, fixed, and biological trait of human beings – that, whether heterosexual, homosexual, or bisexual, we are 'born that way' – there is insufficient scientific evidence to support that claim. In fact, the concept of sexual orientation itself is highly ambiguous; it can refer to a set of behaviors, to feelings of attraction, or to a sense of identity." ("Sexuality and Gender," Dr. Paul McHugh and Dr. Lawrence Mayer, *The New Atlantis*, Fall 2016)

The definition of "gender identity or expression" contained in HB 184 is even more hazy: **"having or being perceived as having or expressing a gender, self-image, appearance, or behavior, regardless of whether that gender, self-image, appearance, or behavior is different from that traditionally associated with the sex assigned to that person at birth."**

This proposed definition would codify into law a tendentious, ideological, and unscientific view of gender. The reference to sex as something that is "assigned to that person at birth" suggests a certain arbitrariness to the matter of gender, as if one's sex was something foisted upon a person by the attending physician. A person's sex is not "assigned" at birth, it is present from the moment of conception and *observed* at birth.

In addition, the use of the formulation "having or being perceived as having or expressing…" is troubling. Perceived by *who* – the alleged victim of discrimination, the alleged perpetrator, a third party, a government investigator, or all the above?

Why don't we see this "having or being perceived as having" distinction applied to other categories within the anti-discrimination code – e.g., "having or being perceived as having" a certain race, skin color, marital status, etc? This "perception clause" takes an already vague definition and turns it into a subjective morass, thus empowering attorneys, state bureaucrats, and judges to interpret it in whatever manner suits their personal ideology.

Finally, terms such as "self-image" and "expression" involve nebulous concepts that are not clearly defined in law, and which may be constantly evolving. Laws that protect our rights should be unambiguous, not moving targets that mean different things to different people.

Coercion and punishment for those who conscientiously object

HB 184 is virtually identical to laws in other jurisdictions that are routinely used to bully and punish those who simply don't wish to express ideas or celebrate events that violate their deepest held beliefs. The following are just a few of the more notorious cases:

- **Christian wedding photographers punished for declining to photograph same-sex ceremony.** In 2006, the owners of a New Mexico photography business – Jonathan and Elaine Huguenin – were approached by a lesbian couple who wanted to hire them to photograph their same-sex "commitment ceremony" (at the time, same-sex marriage was not even legal in NM). The Huguenins gladly provided many services to gay and lesbian customers, such as portrait photography. But Elaine politely declined to participate in the ceremony, as it would require the use of her artistic talents to express a message that conflicted with her Christian beliefs. Nevertheless, the lesbian couple filed a complaint with the New Mexico Human Rights Commission – arguing the Huguenins had violated New Mexico's prohibition of discrimination based on "sexual orientation." The Commission agreed – they ruled against the Huguenins and ordered them to pay over $6,600 in attorneys' fees. The case was appealed through the state court system – with the New Mexico Supreme Court also ruling against the Huguenins. One Supreme Court justice coldly wrote, "[the Huguenins] now are compelled by law to compromise the very religious beliefs that inspire their lives," stating that this is "the price of citizenship."

- **Florist sued after declining to decorate venue for same-sex wedding.** The owner of Arlene's Flowers in Richland, Washington, has happily served customers for many years who identify as gay or lesbian – including long-time customer Robert Ingersoll. But when Ingersoll asked the florist shop owner, Barronelle Stutzman, to decorate the venue for his upcoming same-sex wedding ceremony, Stutzman felt that she had no choice but to decline. Stutzman felt that using her creative talents to enhance a ceremony that conflicted with her deeply held religious beliefs was impossible. Stutzman's decision to live by her conscience has cost her dearly – both the Washington State Attorney General and the ACLU have sued her. A lower state court has ruled against Stutzman, and so has the Washington State Supreme Court. The case may be appealed to the U.S. Supreme Court. The lawsuits in question target not only the business Arlene's Flowers, but also Barronelle Stutzman personally. Thus, if she loses, the 72-year-old grandmother faces not only the loss of her business, but her home as well.

- **Christian bakers driven out of business.** The owners of Sweet Cakes by Melissa, Aaron and Melissa Klein, are devout Christians. When a same-sex couple approached them about creating and decorating a cake for a wedding, the Kleins felt they could not provide this service without violating their conscience. This resulted in an enforcement

action against them from the Oregon Bureau of Labor and Industries, which ordered the Kleins to pay $135,000. The draconian fines along with public harassment forced the Kleins to shut down their business in September 2013, a devastating blow for these parents of five children. The State of Oregon also imposed a "gag order" on the Kleins, demanding that they not discuss their faith-based reasons for declining to participate in same-sex wedding ceremonies. The Oregon BOLI Commissioner, who has been spearheading the case against the Kleins, made a chilling statement that the Kleins had "disobeyed Oregon law and needed to be rehabilitated."

HB 184 proposes a legal regime that is inimical to a free society, because it mistakenly categorizes *disagreement* as "discrimination." How many individuals, rather than endure costly and gut-wrenching lawsuits, as in the examples above, will instead abandon their chosen occupation in favor of something that is "lower profile"? Does this sound like tolerance? Are we promoting diversity when we fashion laws that force Christians to the margins of society, by essentially placing many careers off limits, lest someone be offended by their religious beliefs?

Undermining privacy of persons using intimate facilities such as locker rooms, etc.

HB 184, by prohibiting discrimination based on "gender identity and expression," would directly lead to the reckless policy of allowing men to enter women's locker rooms, showers, and restrooms – and vice versa.

Many other jurisdictions have adopted similar laws, and the evidence is mounting that this is a disastrous social experiment. Under the guise of protecting the less than one percent of the population that self-identifies as "transgender," these laws trample on the privacy and safety interests of the other 99 percent of citizens. Here are examples of the disorder created in the wake of these laws:

- *Headline:* **"Man caught undressing in front of girls at Green Lake locker room."** Just weeks after the Washington state Human Rights Commission adopted a rule allowing men to enter intimate facilities reserved for women, a young man entered the locker room at a Seattle-area swimming pool. The following report from local news station KOMO is self-explanatory:

  "David Takami with the Seattle Parks and Recreation Department said a man arrived at the Evans Pool in Greenlake Monday afternoon and paid to use the lap pool.

  "Takami said the man then entered the women's locker room and took off his shirt in front of a local girls swimming team, which had just finished practicing. Several parents and other women using the locker room became alarmed and alerted pool staff.

"When staff members confronted the man, he left the locker room and went swimming. When he was done, Takami said the man went back into the women's locker room and was again asked to leave. **The man resisted, telling staff members the law had changed and he now had a right to use the locker room of his choice,** according to Takami." *(emphasis added)*

- *Headline:* **"College Allows Transgender Student in Women's Locker Room"** (*ABC-30 Action News* – 10/29/12).

  "Some call it an outrage; others equal rights – after a 45-year old student… born a man, began to use the women's locker room, because the student identifies as a woman. A young girl saw the student naked. Her mother called police."

  "Jason Wettstein, Evergreen State College spokesman said, 'The college has to follow state law. The college cannot discriminate… on the basis of gender identity. Gender identity is one of the protected things in discrimination law…"

- *Headline:* **"Lawsuit filed after transgender student gets locker room access in Palatine."** (*Chicago Tribune* – 05/05/16).

  "A group of… students and parents is suing the U.S. Dept. of Education and Illinois' largest high school district after school officials granted a transgender student access to the girls' locker room. In a lawsuit filed in federal court… the group contends that the actions of the Dept. of Education and Palatine-based Township High School District 211 'trample students' privacy' rights and create an 'intimidating and hostile environment' for students who share locker rooms and restrooms with the transgender student."

No one, and especially the government, should expect young girls to undress and be exposed to a member of the opposite sex in intimate facilities such as showers and locker rooms. The safety and dignity of persons using private facilities must be protected.

In conclusion, we ask you to reject HB 184. This ill-conceived legislation threatens privacy, undermines freedom, and does not protect the common good.

Sincerely,

Jim Minnery, President
Alaska Family Council