



AMERICAN CIVIL LIBERTIES UNION

Michigan

**House Judiciary Committee**

**March 8, 2023**

**Senate Bill 4 and HB 4003 - Support**

The ACLU of Michigan supports the passage of Senate Bill 4 and House Bill 4003, which will update Michigan's Elliott-Larsen Civil Rights Act (ELCRA) to include sexual orientation, gender identity and expression. Doing so will explicitly guarantee all members of the LGBTQ+ community in our state will be protected from discrimination in employment, housing, education, and public accommodations.

Michigan's LGBTQ+ community's struggle to ensure equal protection under ELCRA has been going on almost as long as the act has been in place since 1976. During that time, the ACLU of Michigan has received more than several hundred complaints of discrimination against LGBTQ+ people in almost every facet of life- including discrimination in employment, housing, education, access to health care, and other public accommodations.

One such person was Aimee Stephens, who was subjected to illegal discrimination when she was fired after she came out as transgender to her employer at a Michigan funeral home in 2013. Being let go from a job she loved only because she chose to be her authentic self was something Aimee refused to accept. Fighting back meant a years-long, often arduous legal struggle that ultimately ended at the United States Supreme Court in 2020, when the court ruled in *Bostock v. Clayton County* that employment discrimination based on LGBTQ+ status is discrimination in violation of federal civil rights laws prohibiting sex discrimination.

Last summer, building on the foundation set by *Bostock*, the Michigan Supreme Court issued a decision in the case of *Rouch World LLC v. Michigan Department of Civil Rights (MDCR)* holding that Michigan's Elliott-Larsen Civil Rights Act protects people against employment, housing, education, and public accommodations discrimination based on sexual orientation.

Despite these recent advancements by the U.S. Supreme Court and Michigan Supreme Court, updating ELCRA to explicitly protect LGBTQ+ people from discrimination remains a critically important step because it will also add an important layer of protection. With a law in place that explicitly mandates that LGBTQ+ people fall under ELCRA's umbrella, a negative court ruling in the future can't wipe out important progress that's been made.

Opponents of this legislation maintain that according LGBTQ+ people the same dignity and fairness as other residents in our state, violates the religious freedom of those who would choose to discriminate- we would like to remind this body that religion is a protected category under ELCRA. The ACLU is both a strong advocate and supporter of freedom of religion guaranteed under the Constitution. For more than a century we have defended the right of religious institutions to be free from government interference when it comes to that institution's religious activities. The First Amendment provides for separation of church and state and recognizes that religious institutions and people of faith are entitled to hold their sincerely held beliefs. It is within this framework that we can state that these amendments will not require a church to officiate a wedding between a



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same-sex couple, nor will it require a church, mosque, or synagogue to hire an LGBTQ person to carry out its ministerial functions.

However, some opponents have argued that when it comes to LGBTQ people, there is a right to discriminate in non-religious activities, because of their faith beliefs. Our constitution has never recognized this purported “religious freedom.” Our courts have refused to permit individual religious beliefs to be used as a sword to harm others under civil rights laws, with regards to non-religious activity. During the 1960’s this same argument was used to evade civil rights protections on the basis of race. Restaurant owners in the South argued that because their religious teachings told them that God put the races on separate continents, they should not have to comply with civil rights laws and serve African American patrons. The Courts did not recognize nor did legislative bodies provide for this exemption- and they should not do so now.

Such an exemption for LGBTQ civil rights, creates a form of second-class citizenship and presents a dangerous slippery slope for civil rights laws, providing a license to discriminate in non-religious activity. The business owner who voluntarily chooses to enter the realm of commerce is subject to a variety of laws - their store must comply zoning ordinances, occupational health and safety codes and standards, they must deduct social security tax from their payrolls, and they must comply with civil rights laws. For decades people of faith have complied with ELCRA with regards to non-religious activity and there’s no reason why that should have to change when LGBTQ people are involved.

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