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THE TRANSGENDER MOVEMENT AND "DISCRIMINATION"

TESTIMONY IN OPPOSITION TO MARYLAND SENATE BILL 566 REGARDING "GENDER IDENTITY"

Peter Sprigg

The following testimony was given by Peter Sprigg to the Maryland State Senate Judicial Committee in Annapolis, Maryland on March 4, 2009.

Good afternoon. I would like to lay out for you some fundamental philosophical issues you should consider whenever examining a piece of legislation that would expand the categories of "discrimination" that are forbidden by law.

Our gut reaction when we hear the word "discrimination" is to regard it as an intrinsic evil. Such a reaction, however, is conditioned primarily by our country's long and shameful history of one particular form of "discrimination"—namely that based on race.

However, the mere word and concept of "discrimination" is actually morally neutral. "To discriminate" simply means "to make a distinction" between things, ideas, or people. When viewed this way, we can see that "discrimination" in some sense is not only permissible, it is inevitable and even essential.

For example, the only way to make employment decisions *without* "discriminating" is to put the names of all job applicants into a hat and give the position to the person whose name is drawn out at random. Such a procedure would be absurd—but using any more considered or deliberate method inevitably introduces some type of "discrimination" into the process. The question, therefore, is not whether any "discrimination" will occur—it can, it will, and it must. The question, instead, is which forms of "discrimination" are considered legitimate and which are considered illegitimate.

Some may answer by saying, "Discrimination based on any characteristic not relevant to the performance of the job is illegitimate." Yet that answer raises a further important question—*who is to decide* which characteristics are relevant to the job, and which ones are not? Should employers have the right to make that decision based on their own knowledge of the unique circumstances of each industry, company, and position? Or should the government impose, by force of law, a one-size-fits-all solution?

We are not talking, after all, about the kind of abstract "rights" which hurt no one when they are extended to others, such as the right to vote. Instead, we are talking about a clash of rights, in which an employee's supposed "right" to be from "discrimination" is at odds with the employer's normal right to determine the qualifications for and set the terms of employment.

Given this clash of rights, the default position in a free society and a free market should be in favor of allowing employers to make this decision without interference from the government, except in the most extraordinary circumstances. What would constitute such extraordinary circumstances? Race is certainly one characteristic that qualifies, because of our nation's history of centuries of brutal slavery followed by another century of legally-enforced segregation. Sex would qualify because of a long history of stereotyping which limited some occupations almost entirely to one sex or the other.

What both race and sex have in common is that they are inborn, involuntary, immutable, and in the Constitution of the United States. None of those criteria apply, however, to the *voluntary* decision of some individuals to present themselves to the public with a "gender identity" which is the *opposite* of the *inborn* biological sex that is written *immutably* in the chromosomes found in every cell of their bodies. And, under the definitions in this bill as drafted, that adopted "gender identity" need not even be permanent, but could change virtually from day to day.

The authors of this bill actually concede that it is legitimate for employers to set dress and grooming standards for their employees. Yet one of the most fundamental dress and grooming standards imaginable is that people should be dressed and groomed in a way that is culturally appropriate for their biological sex. I urge you not to take away the right of employers and businesses to set such a reasonable standard.

I urge you to oppose Senate Bill 566.

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Peter Sprigg is the Vice President for Policy at the Family Research Council