

Testimony of Letitia Harmon, Policy Director, American Civil Liberties Union of Kansas -In support of a Prairie Village non-discrimination ordinance

October 15, 2018

The American Civil Liberties Union (ACLU) of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas, is pleased to strongly support this non-discrimination ordinance. The ordinance would ensure that all residents of Merriam are protected from discrimination in employment and housing, and public accomodation. This ordinance prohibits discrimination that is based simply on sexual orientation and gender identity.

All hardworking people should be treated fairly and equally under the law. When it comes to being able to earn a living or find a place to live, all Kansans should have the same freedom. Although Kansas law currently provides that protection to many people and groups, it excludes Kansans who are gay or transgender. In the absence of state action on this issue, the city of Prairie Village has the legal right to stand up for our shared American values and ensure that all residents of Prairie Village have access to the same opportunities, and are protected from discrimination.

1. Discrimination is widespread

Numerous studies and surveys show that LGBTQ people continue to experience unfair treatment in finding and holding jobs to support themselves and their families. Although 73% of Americans support workplace protections for LGBTQ individuals, Kansas has yet to provide any. 79% of Kansans polled agree that LGBTQ people experience moderate to great amounts of discrimination in this state.¹

In 2010, 78% of transgender individuals surveyed in Kansas by the Williams Institute of UCLA Law reported experiencing harassment or mistreatment at work. Nearly half of gay and trans individuals said they had been discriminated against in hiring, promotion, or job retention. In terms of income, there is a 31% disparity between straight and gay male workers.²

In Kansas school districts, teachers in same sex relationships are afraid to reveal their relationship status or invite their partner to school events for fear of being fired. They are offered no legal protections, and they know that employment discrimination is rampant.

In 2015, a Kansas transgender survey found that 7% of surveyed transgender individuals were unemployed, vs. 4% in the overall population of Kansas. 36% live in poverty, vs. 12% of the overall population. Approximately one third of transgender individuals who held or applied for a job during that year reported being fired, being denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.

¹ Movement Advancement Project. "Equality Maps: State Non-Discrimination Laws."
http://www.lgbtmap.org/equality-maps/non_discrimination_laws (10/1/2018).

² <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Kansas-ND-September-2015.pdf>

Survey respondents who had a job reported being verbally harassed, physically attacked, and sexually assaulted at work because of their gender identity or expression.

22% of respondents experienced some form of housing discrimination in 2015, such as being evicted from their home or denied a home or apartment. A third of transgender individuals have experienced homelessness at some point in their lives. 10% experienced homelessness because of being transgender in 2015 alone, while that rate is less than 1% among that general population of Kansas.³

Without any legal protections, poverty, homelessness, and abuse against gay and trans Kansans are widespread. Rather than being treated as equal members of society, they suffer the consequences of discrimination with harassment, job loss, and eviction.

2. Kansas state law does not protect LGBTQ individuals from discrimination

Since neither federal nor state law prohibits LGBTQ discrimination, this leaves 83,300⁴ Kansans without any protection for employment or housing. Cities and municipalities have taken it on themselves to enact NDOs such as the one proposed in order to curb joblessness and homelessness and help improve the lives of their citizens through protecting freedoms and equality.

3. Cities have the legal right to pass NDOs

A number of Kansas municipalities and three of the public universities provide protections. Manhattan, Lawrence, and Roeland Park, among others, have adopted non-discrimination ordinances, which apply to employers with 4 or more employees. Shawnee County has a non-discrimination policy for county government employees.

Kansas is a home-rule jurisdiction state, therefore such policies and laws are within the right of cities to make for themselves.

225 cities and counties nationwide have taken this step of providing protection for LGBTQ rights when the state does not, including Birmingham Alabama, Phoenix Arizona, Denver Colorado, and Washington D.C.⁵

4. The law is trending toward equality

Despite the persistence and pervasiveness of discrimination against LGBTQ people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws puts a minimal burden on state agencies. Complaints of discrimination by LGBTQ people are filed at approximately the same rate as complaints of discrimination due to race or gender. Because the LGBTQ population is smaller, the actual real number of complaints is quite low. The Williams Institute at UCLA Law estimates that statewide in Kansas, there would only be 26 complaints filed each year, causing a negligible impact on finances or time. Thus far, no complaints have been filed in the Kansas municipalities that have NDOs. There is no evidence that there will be a substantial burden of litigation for the city.

³ 2015 U.S. Transgender Survey: Kansas State Report. (2017). Washington, DC: National Center for Transgender Equality.

⁴ <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Kansas-ND-September-2015.pdf>

⁵ <https://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender>

And nationally, the trend is beginning to shift. Various rulings by the federal Equal Employment Opportunity Commission extend Title VII's prohibition on sex discrimination to prohibit discrimination on the bases of sexual orientation and gender identity. However, EEOC rulings are not binding on private employers and federal courts may rule differently.⁶

In *EEOC v. R.G. & G.R. Harris Funeral Homes*, the 6th circuit court found that Ms. Stephens should not have been fired by the funeral home. After six years of stellar performance reviews, she was fired just because she informed her supervisor she was transgender. The court ruled in her favor.

Providing a non-discrimination ordinance now would allow Kansas to get ahead of the curve, and avoid future expensive lawsuits. It would give employers, government staff, and housing providers a standard of fairness to adhere to.

5. A non-discrimination ordinance would ensure equality

Adding sexual orientation and gender identity to existing non-discrimination laws ensure that LGBTQ people receive the same protections as other minority groups. That is consistent with America's guiding principle to allow freedom and equality to all.

This ordinance creates an equal playing field for employment, housing, and public accomodation. This kind of ordinance is the same tool legislatures have used for decades to ensure equal treatment of certain groups of citizens who have historically been treated unequally. This would protect all people, gay or straight, man or woman or non-binary, from unfair treatment on the basis of sexual orientation and gender identity.

On behalf of the ACLU of Kansas, we strongly urge you to move your city in the direction of equality, and pass this non-discrimination ordinance.

⁶ Movement Advancement Project. "Equality Maps: State Non-Discrimination Laws." http://www.lgbtmap.org/equality-maps/non_discrimination_laws (date of access).