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Dear Senator Baker and Senator Tartaglione,

Thank you for the opportunity to submit written testimony for the Senate Labor and Industry Committee's hearing on Senate Bill 1306. I am submitting this statement on behalf of the 23,000 members of the American Civil Liberties Union of Pennsylvania.

As you know, SB 1306 amends the Pennsylvania Human Relations Act (PHRA) to include sexual orientation and gender identity or expression as characteristics protected from discrimination in employment. As you may also know, the PHRA also provides protection from discrimination in housing and public accommodations for every other characteristic listed in the act.

The ACLU of Pennsylvania believes that SB 1306 leaves gay and transgender Pennsylvanians short of the necessary coverage provided in the PHRA and treats them as lesser under the law. Although we are grateful for the efforts of the primary sponsor, who has also introduced SB 974 to provide comprehensive protection for gay and transgender people, the ACLU of Pennsylvania neither supports nor opposes SB 1306.

To be sure, SB 1306 implements explicit workplace protections for gay and transgender people in state law. This is an issue of basic fairness. Like all workers, LGBT people should be judged fairly based on their ability to perform a job and not on any factor that is irrelevant to the work.

More than 30 municipalities in the commonwealth have implemented non-discrimination ordinances that include sexual orientation and gender identity or expression. Unfortunately, this local coverage is woefully inadequate to protect LGBT workers throughout our state, as the municipalities with these ordinances account for approximately 32 percent of the population of Pennsylvania.

One of the benefits of these local laws, however, has been to provide a laboratory of sorts on the implementation of comprehensive non-discrimination protections. Without a doubt, you will hear claims from opponents of equality that the passage of statewide protections for gay and transgender people will lead to any manner of problems for businesses. And yet the experience of these localities has been that these local ordinances have leveled the playing

field for LGBT people and have made those municipalities attractive places to live and work. Treating gay and transgender workers fairly has become a part of doing business in those communities.

As you probably know, one area of debate on this issue is around religious exemptions. Nothing in this bill or any other non-discrimination bill currently before the Senate would diminish the First Amendment rights of religious institutions. Nothing in any non-discrimination legislation alters those rights. By definition, it cannot. In fact, the Supreme Court has reaffirmed that no government can compel a religious institution to hire or retain anyone who plays a ministerial role, and this legislation respects that understanding.¹

SB 1306 preserves the existing exemptions that apply to religious organizations and simply adds protections from discrimination based on sexual orientation and gender identity to the list of prohibited characteristics, maintaining the balance that has worked well in the Pennsylvania Human Relations Act for so long.

While we recognize the critical importance of expanding employment protection in SB 1306, gay and transgender Pennsylvanians must navigate unjust and unacceptable discrimination in other parts of their daily routines. Simply doing things many of us can take for granted - renting an apartment, seeking medical care, going to eat at a restaurant – cannot be taken for granted by LGBT people in our state. Housing protections ensure all of us have a fair chance at a decent place to live without discrimination based on who we are. And public accommodation protections have long been at the center of our country’s history of civil rights struggles, including lunch counters, hotels, public swimming pools, restrooms, and transportation centers because equal access to these kinds of public spaces is a predicate for full participation in public life.

It defies logic for the legislature to prohibit a business from discriminating against gay and transgender employees while tacitly approving of that same business discriminating against LGBT customers. A comprehensive bill like SB 974 will treat sexual orientation and gender identity or expression in the same manner as every other protected characteristic in the PHRA, and it will definitively ensure that gay and transgender Pennsylvanians will have a remedy in state law for answering discrimination in the workplace, in renting and buying a home, and in their participation in public life.

The ACLU of Pennsylvania is grateful for the efforts of the supporters of SB 1306 and the other non-discrimination bills before the Senate. But the LGBT community deserves to be treated equally under the PHRA. Gay and transgender Pennsylvanians have waited long enough for the passage of this legislation. Please support all efforts to revise non-discrimination bills before the Senate to provide complete protection for LGBT people.

Thank you for considering our views.

Sincerely,
Andy Hoover
Legislative Director, ACLU of Pennsylvania

¹ See *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. ____ (2012)