

A. RICHARD VIAL
STATE REPRESENTATIVE
HOUSE DISTRICT 26
SCHOLLS, SHERWOOD AND SURROUNDS



April 19, 2017

HOUSE OF REPRESENTATIVES

RE: HB 2005

Chair Taylor and Members of the Committee:

I write to share with you my brief comments on HB 2005A. As you may know, I was the lone Republican in supporting the engrossed version of the bill off the House Floor. I particularly want to voice my support for a key provision that was included in the Minority Report, the Affirmative Defense.

I believe that the addition of the particular affirmative defense proposed adds to the effectiveness of this important bill. There is no question that discrimination of any form is unconscionable, and we should do everything possible to avoid it. Adding the affirmative defense would increase the effectiveness of the law.

I've spent the last 35 years as a trial lawyer, and I've dealt with many affirmative defenses. In fact, I have had cases that didn't go forward because of an affirmative defense. An affirmative defense requires the defendant to prove that they, in fact, have the factual basis necessary to move forward with that defense. The burden shifts, in other words. Whereas, in most cases the burden is on the plaintiff to prove their case, with respect to an affirmative defense, that burden shifts completely to the defendant, and the plaintiff does not have that burden.

There are many affirmative defenses that could be raised in this kind of action – not just the one that's mentioned in the minority report. But this affirmative defense does something that I think is very important: it not only encourages companies, large and small, to determine if they have a problem, but then gives them a tool in the event that they find that they do have a problem, one that does not require them to spend tens, perhaps hundreds of thousands of dollars in legal fees to solve that problem.

I believe the addition of this particular affirmative defense strengthens the ability of this bill to do what we all want it to do, to discourage the practice of discrimination at all levels.

I urge you to include the affirmative defense in the final bill out of the Senate and look forward to the concurrence vote.

Respectfully,

Rich Vial
State Representative
House District 26

