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February 25, 2019

Chair Williamson
House Judiciary Committee
Oregon Legislative Assembly
900 Court Street NE
Salem, OR 97301

Re: Support for HB 2589

Chair Williamson, Vice Chair Gorsek, Vice Chair Sprenger, and members of the committee:

I submit this letter in support of HB 2589, a bill to remove offensive and outdated terminology in Oregon's employment law statute. I write as a labor and employment attorney who works with these statutes on a daily basis. I also write as a board member and Judiciary Chair for OGALLA: the LGBT Bar Association of Oregon, and as co-Chair of the Oregon Trans Law Caucus. Finally, I write as a member of the community directly affected by these provisions. This bill will make positive changes in the law for the benefit of transgender Oregonians, and I urge the committee to support it.

First, this bill addresses outdated and offensive language in statute, language from eras past with no place in our current statutory scheme. Specifically, this bill removes the terms "transsexualism" and "transvestism" from pertinent provisions of our disability anti-discrimination law, ORS 659A.103 *et seq.* At this point in time, this language is widely recognized as outdated and inaccurate. These terms harken back to prior eras where trans people were ubiquitously disrespected and denigrated. Modernizing this language will help to assure transgender Oregonians that they are in fact recognized and included under Oregon law.

The term "transvestism" is particularly hurtful. Included within a horror list of criminal sexual misconduct, this term evokes some of the worst and most harmful stereotypes about transgender people. It calls to mind old tropes of transgender people as sexual deviants, and possible sexual predators. As a transgender person myself, and as a soon-to-be parent, seeing trans-related terminology listed next to "pedophilia" is frankly sickening. At the same time, removing this term will not impair the efficacy of the relevant provisions. The remaining catchall will still apply to exclude qualifying disorders. This bill is ultimately about cleaning up these unfortunate references, and removing these offensive associations, without hindering the actual purposes of our employment anti-discrimination laws.

In Oregon law, modern legislative enactments recognize "gender identity" as the most accurate descriptor for referring to transgender identity, and the appropriate terminology to use for provisions addressing

transgender people. As we move forward, it is appropriate to clean up offensive, vestigial terms, to make the law current and consistent.

Oregon law includes broad protection for employees from discrimination on the basis of gender identity. ORS 174.100(7); ORS 659A.030(1)(a), (b). Our employment anti-discrimination laws protect transgender people under the same rubric as employment discrimination on the basis of race, sex, age, and national origin, among other bases. These laws apply equally to transgender people, recognizing their equal dignity.

This manner of protection is appropriate because a person's gender identity is an inherent attribute, an aspect of identity and character. The word "transgender" itself is an adjective, not a noun: a transgender woman's gender identity is female; a transgender man's gender identity is male. That is, these are facets of personal identity, not tangible limitations. Many trans-exclusionary policies have been premised precisely upon the assertion that transgender people are somehow inherently incapable, defective, or otherwise "impaired" by virtue of being transgender. By affirming that gender identity is a matter of identity, not capability, this bill clarifies the appropriate recognition of gender identity under the law.

The outdated provisions addressed by this bill muddy this line between conditions, diagnoses, and care on the one hand, and inherent gender identity on the other. In fact, these topics are distinct, and these facets of individual experience are distinct. Transgender people may have various individual needs in terms of medical care or other treatment, they may or may not have varying diagnoses, and they may or may not have various conditions that could limit life activities. These are all distinct from gender identity, and this bill seeks to clarify that.

The disability provisions addressed by this bill are also obsolete, and incompatible with our most current anti-discrimination law. Their core purposes have been refuted by later enactments, and so the terms remaining are not just out of date, but also vestigial. Because they are so outdated and out of touch with the current understanding of trans experience, they are hopelessly vague and confusing to apply in practice. That is to say, it is very difficult to say what "arising out of transsexualism" even means when set against the experience of many transgender employees, and when employers seek to create clear and consistent policies to ensure compliance with the law. Cleaning up these provisions will not only honor the dignity of transgender people, but it will also clear up a muddled and confusing relic from a different time.

This bill presents a wonderful opportunity for the Legislature to again affirm the equal dignity of transgender people, and I encourage the committee to take it.

Respectfully,

BENNETT HARTMAN, LLP



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