



## TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS ON SENATE JOINT RESOLUTION NO. 35

Connecticut Joint Committee on Government Administration and Elections  
February 7, 2025

Dear Senator Flexer, Representative Blumenthal, and Distinguished Members of the Committee on Government Administration and Elections,

My name is Hannah Hussey. I am a staff attorney at GLBTQ Legal Advocates & Defenders, also known as GLAD Law. I appreciate the opportunity to testify in support of the Resolution Proposing a State Constitutional Amendment Concerning Discrimination on the Basis of Sex Under the Equal Protection Clause.

We appreciate Connecticut's long history of standing up for its LGBTQ community members. The state's commitment carries great weight, as we see efforts unfolding in real time to create chaos, confusion, and pain for LGBTQ people across the country.

To be clear: there is an ongoing attempt to roll back vital protections for LGBTQ people at the federal level. This is resulting in uncertainty and distress for community members, families, educators, and service providers. Strong, clear state-level protections help all of us understand what rights exist.

In 2020, the U.S. Supreme Court considered a case involving discrimination under Title VII, which protects individuals from employment discrimination on the basis of a number of classifications, including sex. The Court ruled in that case that discrimination based on gender identity and expression and on sexual orientation inevitably involves sex discrimination. *Bostock v. Clayton County*, 140 S.Ct. 1731, 1738 (2020).

This year, the U.S. Supreme Court is confronting a similar question in the case *United States v. Skrametti*. There, the Court is considering whether a Tennessee law targeting transgender youth violates the U.S. Constitution's Equal Protection Clause by creating an impermissible sex classification. There is every reason for the Court to determine that what it said in *Bostock* holds true in the context of equal protection – to decide that this law creates a classification based on sex and therefore triggers heightened constitutional scrutiny.

However, we do not yet know what the U.S. Supreme Court will decide. In this shifting landscape, what Connecticut's state constitution says about how the state treats its citizens matters as much as ever.

Connecticut has a strong foundation on which to build in this regard. The Constitution of the State of Connecticut's Declaration of Rights begins with a broad pronouncement of its purpose:

“That the great and essential principles of liberty and free government may be recognized and established.”

That opening clause is followed immediately by a declaration of specific rights, including Article First, §§ 1, 20, which provides: “All men when they form the social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.” (§1.) It also provides, “No person shall be denied the equal protection of the law nor subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.” (§ 20.)

In 1974, Article First, § 20 was amended to state that “discrimination because of . . . sex” was a constitutional commitment along with a policy one. The meaning of “discrimination because of sex” was often considered then as between men and women, based on their birth sex. In some ways, it still is. In fact, the U.S. Supreme Court used that understanding in the *Bostock* case.

Connecticut state laws have already distinguished Connecticut as a leader among states, one that acts in a strategic and informed way to respond to real problems and advance equality.<sup>1</sup> And the Connecticut Supreme Court held in 2008, in *Kerrigan v. Comm’r of Pub. Health*, that prohibiting same-sex couples from marrying violated the state constitution. 289 Conn. 135 (2008). That case recognized the special role that the state constitution plays, saying that it is “beyond debate that federal constitutional and statutory law establishes a *minimum* national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights.” *Id.* at 155 (internal citation omitted).

The *Kerrigan* court also recognized that judicial protection matters even when there have been legislative successes to protect a particular group, or when it appears that there soon will be. As the court explained, “because support for particular legislation may ebb or flow at any time, the adjudication of the rights of a disfavored minority cannot depend solely on such an eventuality.” *Kerrigan v. Comm’r of Pub. Health*, 289 Conn. 135, 212, 957 A.2d 407, 453 (2008). This analysis supports a broader point: that protections grounded in the constitution are important even where there are strong laws on the books.

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<sup>1</sup> In 1969, the legislature decriminalized sodomy, thereby ending the criminalization of a gay person’s self-expression and affection. P.A. 69-828 § 214 (“An Act Concerning Revision and Codification of the Substantive Criminal Law”). It addressed “widespread, even systematic” discrimination against individuals with respect to basic civil transactions and passed “An Act Concerning Discrimination on the Basis of Sexual Orientation,” to provide fair treatment in housing, public accommodations, and employment in a like manner as to race, sex and other personal characteristics. P.A. 91-58. Over time, the General Assembly began to see that fairness to individuals was not enough and created an explicit process to allow co-parent adoption to assist gay and lesbian (and other non-marital) families with children in formalizing their legal, parent-child relationships. P.A. 00- 228 (“An Act Concerning the Best Interest of Children in Adoption Matters”). Two years later, the legislature authorized the extension of limited legal protections through “An Act Authorizing The Designation of A Person To Assume Ownership of a Motor Vehicle Upon the Death of the Owner and Authorizing The Designation of a Person For Certain Other Purposes”. P.A. 02-105. In 2009, the legislature codified the Supreme Court decision in *Kerrigan v. Dept. of Public Health*, 389 Conn. 135, 957 A.2d 407 (2008) and made other improvements to the law involving same-sex couples. P.A. 09-13 (“An Act Implementing the Guarantee of Equal Protection Under the Constitution of the State for Same Sex Couples”). And in 2011, the Legislature expressly included transgender people in nondiscrimination laws with P.A. 11-55 (“An Act Concerning Discrimination”).

In *Kerrigan*, the Connecticut Supreme Court referred to the state constitution as an “instrument of progress.” *Id.* at 156. As the federal government adopts regressive policies intended to harm women, people of color, and LGBTQ communities, including transgender people and their families, states like Connecticut will be in the spotlight. Our country’s federalist system means that regardless of what happens at the national level, states have the ability to establish the law for their own citizens in a range of areas.

The proposed resolution would make clear that Connecticut’s promise of equal protection applies to its residents regardless of their sexual orientation or gender identity. As such, GLAD Law supports this initiative and appreciates your thoughtful attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Hannah Hussey". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Hannah Hussey  
Staff Attorney  
GLBTQ Legal Advocates & Defenders