

TESTIMONY OF
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TO THE PENNSYLVANIA SENATE COMMITTEE ON LABOR AND INDUSTRY
ON THE OCCASION OF THEIR PUBLIC HEARING CONCERNING
SB 1306

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Today, you are likely to hear LGBT activists clothe themselves in the language of the civil rights movement in their efforts to convince you to support SB1306.

As a person of color, I strenuously object to equating “gender identity” and race. The false narrative, perpetuated by proponents of this bill, that those who do not identify with their biological sex suffer the same plight as Black Americans during the Jim Crow era is not only offensive but intellectually dishonest.

The disgraces and unspeakable hardships faced by Blacks Americans over the course of our nation’s history are, quite simply, unmatched. No other group of individuals, including those who desire to express themselves as a different sex than the one they were born, has ever been enslaved, sold as property, or considered less than human under the law.

No man who expresses himself as female has ever been forced to drink out of a “transgender water fountain,” and no woman who believes she is a man has ever been forced to sit at the back of the bus in the “transgender section.” Americans who self-identify as a different gender have never been denied the right to vote or to attend their neighborhood public schools. They have never been met by fire hoses and lynch mobs. On the contrary, Racists in the Jim Crow era burned our businesses, bombed our churches, and destroyed our communities.

The bills that are currently before the Pennsylvania legislature are not about the lunch counter or the back of the bus. They are about locker rooms, showers, and bathrooms. And while it is true that there was a time when some bathrooms in this country were labeled “whites only” and others as “colored,” that shameful segregation was based solely on the color of a person’s skin--something that has no bearing on which bathroom or shower a person should use. There is no difference between a black man and a white man. But everyone knows there are significant differences between a man and a woman. To compare the two is simply an attempt to intimidate employers and schools into abandoning their duty to protect the privacy, safety, and dignity of their employees and students.

Recognizing the horrific and incomparable history of slavery that our nation went through and that racial differences are almost never relevant, the United States Supreme Court applies its highest level of scrutiny to governmental distinctions on the basis of race.

The Court uses a lower level of scrutiny, however, in determining whether classifying or separating people on the basis of sex runs afoul of constitutional guarantees of equal protection, particularly

where privacy concerns are at play. That is because men and women are anatomically and biologically different in ways that matter. For this reason, although racially segregated bathrooms violate the constitutional guarantee of equal protection, separate public bathrooms for men and women do not because they are based on the common sense recognition that, when a person is in a state of undress, she should not be forced to share that intimate space with a stranger of the opposite sex.

The effect of SB 1306 would be to erase legitimate gender distinctions and effectively eliminate any “safe spaces” for members of one sex or the other. Perhaps this is what the proponents of the legislation want, but I am certain that this is not what the mothers and fathers, children and teenagers, grandmothers and grandfathers, or any other citizens of Pennsylvania want. As lawmakers, you have a duty to preserve the privacy rights and dignity interests of *all* your citizens, not force some into intimate situations with members of the opposite sex.

I have spoken with many state legislators who are worried about being labeled “discriminatory” if they vote against this bill. It is imperative that they understand that requiring men and women to use locker rooms, showers, and bathrooms consistent with their biology and anatomy does not constitute “discrimination,” as experienced for generations of Black Americans.

In fact, the citizens of Pennsylvania have shown great empathy and respect to those struggling with gender identity by offering them compassionate accommodations. They are given a choice to use the bathrooms and other private facilities of those of the same biological sex, or if they would prefer, to have access to a single-stall restroom or changing room where their privacy and dignity would also be respected.

However, if you adopt SB 1306, all Pennsylvanians’ privacy rights will no longer be protected. In particular, a vote in support of SB 1306 will give the government's blessing to invading the privacy and stripping away the dignity of the state’s women and young girls. Furthermore, SB 1306 is especially insensitive to those who have experienced sexual abuse and may undergo additional trauma when forced to be with a member of the opposite sex in this setting.

Religious organizations in Pennsylvania have the right under current state law to hire people who believe as they do and act consistent with those beliefs. This bill you are considering strips that right away from religious employers using an utterly false and offensive comparison to someone’s skin color.

There are those who would argue that a religious organization should have to hire people, even if the person disagrees with the religious organization’s beliefs about marriage or sexuality. They want you to believe that if a religious organization didn’t hire such a person, it would be no different than refusal to hire a person because of the color of their skin. This is a lie.

The color of my skin is not a feeling or desire. It is not something I can choose to act on or not act on. I simply am Black. There’s no action to engage in. And there’s no religious belief about the morality or immorality of any action, since there is no action that I can engage in or not engage in that actualizes my race in the first place.

I can tell you, a man who is attracted to another man can believe, based on his religious beliefs, that he ought not act on his attraction to other men, just as a married man who is attracted to women other than his wife can believe it would be immoral to act on that desire. Both can also refrain from acting on it. Religious organizations know people desire to do things contrary to religious teaching. They don't hire and fire people based on an attraction or even based on a feeling about gender. They care about what ACTION the employee takes, and they care what the employee BELIEVES about the matter. These are religious principles, and has no overlap to race whatsoever.

I woke up this morning — as I have every morning, and will every day for the rest of my life — black. This is not because of how I “feel inside” or how I perceive myself to be. My father didn't live for forty years as a white man and then, one day, discover that he is actually black. He *is* black. My mother doesn't “identify” as black or “express herself” as black. She *is* black. We are grateful to live in a society that does not assign moral or functional relevance to the color of our skin, but there is relevance to the fact that my father *is* a man and my mother *is* a woman. If either of those relevant biological facts weren't true, I would not exist.

Attaching the phenomenon of self-identifying or expressing oneself as different genders over time to the civil rights movement by saying that gender identity is akin to race is intellectually dishonest and dishonors the legacy of the men and women who fought in the civil rights movement so that their children would one day be judged by the content of their character, not the color of their skin.