



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103
(801) 521-9862 PHONE • (801) 532-2850 FAX
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

January 25, 2008

House Business and Labor Committee
Utah House of Representatives
350 North State Street, Suite 350
P.O. Box 145030
Salt Lake City, UT 84114

Re: House Bill 89, "Antidiscrimination Act Amendments"

Dear Committee Member,

The purpose of this letter is to provide you with information as you proceed in making a decision on House Bill 89, "Antidiscrimination Act Amendments." I would like to outline several issues that may have bearing on your decision to send the bill to the House floor for discussion.

There are NO federal or Utah employment discrimination protections for lesbians, gay men, bisexual, or transgender individuals ("LGBT").

- In 2007, the Tenth Circuit Court of Appeals decided the case of *Etsitty v. UTA*, a case concerning the termination of a Utah employee. The court concluded that "discrimination against a transsexual because she is a transsexual is not 'discrimination because of sex,'" and that "transsexuals are not a protected class under Title VII." Thus, members of the LGBT community are unable to avail themselves of current federal or state employment discrimination laws.
- Unfortunately, this argument has been fairly universal. Regretfully, without a specific law providing these protections the courts have no legal justification to rule otherwise.
- Discrimination in the workplace on the basis of sexual orientation and gender identity is a real and pervasive issue in Utah. The ACLU of Utah has received over twenty complaints from members of the LGBT community in the past few years, asserting workplace discrimination. Because there is no remedy under either federal or Utah law, we are unable to provide any assistance to these individuals.

House Bill 89 does not create any standards or protections except those that prevent employers from discriminating on the basis of sexual orientation or gender identity.

- House Bill 89 does NOT create hiring quotas or provide for affirmative action.
- House Bill 89 does NOT promote or legitimize gay marriage.
- House Bill 89 will NOT flood the courts with litigation. Instead, and like the federal and state antidiscrimination laws already in place that protect the rights of

other groups of individuals, it will ensure that hardworking Utahns will not be kept from making contributions to the economic life of our state because of characteristics that have no bearing on their ability to do their job.

- House Bill 89 does not create a suspect class for lesbians, gay men, bisexual and transgender individuals. The enactment of House Bill 89 will not provide members of the LGBT community with any greater consideration by courts than any other class of individuals. Thus far, the U.S. Supreme Court has singled out only race, national origin and gender as suspect classes that are entitled to heightened consideration by the courts, and in fact, has consistently not afforded members of the LGBT community any particular deference. Passage of House Bill 89 will do nothing to alter this situation.

The type of protection that House Bill 89 will provide is not unprecedented.

- 20 states plus the District of Columbia have passed laws that protect lesbians and gay men from workplace discrimination.
- 13 states plus the District of Columbia have passed laws that protect the entire LGBT community from workplace discrimination, in similar fashion to House Bill 89.
- 88% of Fortune 500 companies have recognized that including sexual orientation in their workplace antidiscrimination policies benefits employees and overall economic wellbeing.
- According to a May 2007 Gallup poll, 89% of Americans believe that gay men and lesbians should have equality in the workplace.

I urge you to consider the real and important need for state legislation providing protection from workplace discrimination for lesbians, gay men, bisexual and transgender individuals. Until such a remedy exists, not only will these individuals be denied their equal rights under the law, but the economic community in Utah will be denied the benefit of their positive contribution.

Please feel free to contact me should you have any questions or if you need any further assistance.

Kind regards,
Marina Lowe
Staff Attorney