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Jacques: Is meaning of ‘sex’ ambiguous?

[Ingrid Jacques](#), The Detroit News Published 11:02 p.m. ET Aug. 17, 2017 | Updated 11:24 a.m. ET Aug. 18, 2017

The Michigan debate over whether to extend civil rights protections to gay and transgender residents is back.

Proponents frustrated with the lack of action by the Legislature are seeking other avenues — this time through the Michigan Civil Rights Commission.

While there is a good case to be made for expanding the state’s 1976 Elliott-Larsen Civil Rights Act, the MCRC is the wrong venue. The commission doesn’t have the authority to amend laws or reinterpret language in existing law.

[Elliott-Larsen](#), named after the original bipartisan bill’s sponsors Mel Larsen (a Republican) and Daisy Elliott (a Democrat), covers sex, religion, race, weight, height, age, marital status and more.

The word “sex” is what’s up for discussion. Courts are still undecided on whether sex should include gender identity, as demonstrated with cases involving schools, transgender students and Title IX sex discrimination prevention.

In June, Equality Michigan asked the commission for an [interpretive statement](#) that it is illegal to discriminate in employment, housing or public accommodations based on an individual’s gender identity or sexual orientation — since “sex” is included in Elliott-Larsen.

The group says this isn’t a substitute for legislative action, but it is obviously trying to find a route around existing law.

“We feel strongly that after 30 years of attempting to get the Legislature to acknowledge discrimination is a problem in our state, and 30 years of (gay and transgender people) not having a remedy when they face discrimination, this incremental step is an important one to take while we continue to work” on changes to the law, Equality Michigan’s Nathan Triplett [told The Detroit News](#).

Twenty states, and Washington, D.C., have “banned discrimination based on sexual orientation and gender identity or expression in employment, housing, and public accommodations,” [according to](#) the American Civil Liberties Union.

Equality Michigan and the state's ACLU office, among others, want Michigan to join them.

This state came close in 2014, when the GOP-controlled Legislature nearly had the votes to include language protecting sexual orientation. Lawmakers stopped short, however, from also adding gender identity, and that was enough for Democrats and other groups on the left to pull their support — including Equality Michigan.

That was the best chance to amend the law, and Gov. Rick Snyder, as well as dozens of business groups supported the effort.

The Civil Rights Commission opened the issue to public comment, which ended this week. It received more than 300 comments, and plans to post them to its website.

The Michigan Catholic Conference weighed in, expressing its concerns over the commission's purview to make such significant changes. The group is also adamant that the state shouldn't extend civil rights protections without also granting religious liberty protections.

“Every state in the Union that has expanded its civil rights laws to include ‘sexual orientation and gender identity’ has done so with respect for the constitutional right to religious liberty,” [the MCC wrote](#).

Balancing these constitutional rights isn't easy, but it is an essential part of this discussion.

That's another reason the matter should be settled by lawmakers.

The commission, which is tasked with investigating alleged discrimination, [is expected](#) to address the request at its September meeting.

It should pass on it.

Equality Michigan should have taken the deal it was offered in 2014 and then built on it. Now it should restart the process of building support among the Legislature.

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