

TESTIMONY IN OPPOSITION TO HB516
BEFORE THE SENATE LOCAL GOVERNMENT COMMITTEE
MARCH 14, 2011

Good afternoon Chairman, members of the committee. My name is Pam Walzer. I serve on the Missoula City Council, representing the approximately 12,000 residents of Ward 2.

Ever since I became involved in Missoula politics in 2004, I have heard from my LGBT friends and neighbors, asking/pleading for equal treatment under state law. Regretfully, there has been no positive action on the part of the State to protect them, even as late as just a few weeks ago. I was therefore honored that during my first term on Missoula's City Council, I was able to help enact a city ordinance, protecting the rights of LGBT people with regard to employment, public accommodation and housing within the Missoula City limits.

We in Missoula recognize that discrimination against gay, lesbians, bisexuals, and transgenders exists. For several weeks leading up to and during our very lengthy public hearing, the City Council heard about many instances of discrimination against gays and lesbians. The most blatant forms of discrimination present themselves as hate crimes and Missoula has had more than it's fair share of violent crimes against our LGBT citizens in our recent past, including arson and multiple assaults; one instance was a violent beating of two young men simply because their attackers perceived them (incorrectly) to be gay. It was our **duty** as the Missoula governing body to adopt ordinances to preserve peace and order and secure freedom for all persons from dangerous activities as well as secure and promote the general health, welfare and safety of all persons within our community.

To emphasize whether or not the charter City of Missoula, or any other self-governing local government, has the right to enact such an ordinance that protects additional classes from discrimination, I want to point out a few sections from Montana's constitution and code:

Constitution of Montana -- Article XI -- LOCAL GOVERNMENT

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Montana Code Annotated

7-1-101. Self-government powers. As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include but are not limited to the powers granted to general power governments.

7-1-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

During House floor debate, the following was quoted from state law: ***7-1-113. Consistency with state regulation required.*** (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

What was left out was – the definition of what is “inconsistent with state law”

- (2) *The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.*
- (3) *An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.*

Missoula did not pass an ordinance that was LESS strict, but rather MORE strict than imposed by state law – therefore there is no “inconsistency with state law.” Self-governing local governments do this all of the time – we enact laws that go above and beyond state law. Local governments need to be able to make laws that address local needs such as: bans on driving while talking or texting on cell phone, open container laws, indoor smoking bans, teen curfews, leash laws. Possibly the most analogous local/state “conflict” are the recently enacted local laws from around the state that impose greater penalties (misdemeanor fines/jail time) than the state for refusing to take a breathalyzer (administrative penalty only – loss of drivers license). It is the duty of self-governing local governments to understand local conditions and pass laws specific to their local conditions that protect the health, safety and welfare of their residents.

Within this duty to protect their residents, I respectfully argue that all self-governing local governments, including the City of Missoula, **HAVE** the right to protect additional classes of individuals from discrimination than those listed within Title 49, Human Rights Act.

Some of the argument in the House Judiciary Committee was focused on the complex process laid out in the handling of claims of discrimination under under Montana law. Nothing in the Missoula ordinance changes that process; for those acts specifically addressed in state law – the Missoula ordinance directs discrimination claims to the established process. **BUT** for those discriminations **outside** of those covered by state law, the Missoula ordinance set up the process by which the Missoula law will be enforced – verifying that discrimination (unfair treatment) due to sexual orientation, gender identity or expression would NOT go to the Human Rights Bureau.

Per the Human Rights Bureau:

Issues that are NOT Within the Authority of the Bureau

The Bureau does not handle:

- Hiring and firing decisions which do not relate to discrimination based upon the factors listed above, such as termination without good cause under the Montana Wrongful Discharge Act;
- Access to and confidentiality of personnel files;
- Smokers rights; Indoor Clean Air Act (except when a physically handicapped non-smoker alleges handicap discrimination based upon the smoking of others);
- Matters related to arrest, criminal convictions, or sentencing;
- Matters related to divorce proceedings, child custody and child support;
- Matters related to decrees issued by courts;
- Veterans preference;
- **General unfair treatment not based upon one of the protected classes listed above; (emphasis added)**

governments.

Therefore, the Missoula ordinance sets up a municipal judicial system for discrimination claims for protected classes outside of the authority of the Human Rights Bureau.

As there is a clear difference between municipal only and state classes, the ordinance makes it clear that MUNICIPAL ONLY violations are to be dealt EXCLUSIVELY in municipal court – that the claims of (municipal) acts of discrimination are not to go to the Human Rights Bureau.

It was recognized during the lengthy period from the time the draft ordinance was first proposed to the final public hearing, that there was concern about how claims of discrimination against those classes not listed in the state law would be handled. That is exactly why the detail on state vs. municipal court rules is included within the ordinance – to satisfy concerns about which aspects of a municipal ordinance would be handled in municipal court and what would be under the purview of the Department of Labor.

In addition, language is included that is not normally seen in our municipal ordinances that spells out municipal civil procedure and appeal, as allowed by state law. As stated above and below in state code, the municipal court has exclusive jurisdiction over municipal ordinances, with appeal to district court. Municipal courts also have the ability to establish rules for civil proceedings, so long as they do not conflict with the Montana Justice and City Court Rules of Civil Procedure.

3-6-103. Jurisdiction. (1) *The municipal court has jurisdiction coordinate and coextensive with the justices' courts of the county where the city is located and has exclusive original jurisdiction of all civil and criminal actions and proceedings provided for in 3-11-103.*

3-11-103. Exclusive jurisdiction. *Except as provided in 3-11-104, the city court has exclusive jurisdiction of: (1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;*

3-6-104. Powers and duties of the court. (1) *Except as otherwise provided by this chapter, chapter 30 of Title 25, and part 4 of chapter 17 of Title 46, the municipal court shall have in matters within its jurisdiction all the powers and duties of district judges in like cases. The court may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.*

(2) *The municipal court shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.*

3-6-110. Appeal to district court -- record on appeal. (1) *A party may appeal to district court from a municipal court judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.*

(2) *The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.*

(3) *The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.*

TITLE 25. CIVIL PROCEDURE

CHAPTER 24. MONTANA UNIFORM RULES FOR THE JUSTICE AND CITY COURTS

Rule 1. Scope of rules.

(a) *These rules, together with the Montana Justice and City Court Rules of Civil Procedure, govern the practice in all justice and city courts of the State of Montana.*

(b) No local rules shall be adopted in conflict with these rules.

At the end of a very lengthy public process with hundreds of emails and letters, hours of public comment and testimony over several meetings and hearing, the Missoula City Council voted to adopt this non-discrimination ordinance that adds sexual orientation, gender identity or expression to the list of protected classes within the City of Missoula.

This City Council enacted ordinance is not necessarily the end of process for the voters of Missoula. The voters of Missoula do have recourse if they are unhappy with the actions of their City Council. As spelled out in state law, the City of Missoula voters had the right to submit a repeal petition signed by 10% of the City electors within 30 days of the enactment of the ordinance that would stay the enactment of the non-discrimination ordinance and placed its repeal on the ballot for the next municipal election. Attempts, mostly by non-residents, to create a legally acceptable petition failed. Claims of inappropriate actions by the city attorney and county clerk and recorder during the petition creation process were not supported in district court.

The voters of the City of Missoula still have the authority and power to create a legal petition to place a repeal of the ordinance on the ballot in the upcoming municipal election. They do not need the State Legislature to strip their local government of their self-governing powers. Missoula citizens are engaged in their local government. If they feel we, their governing body, are overstepping our bounds – they let us know about it. They let us know via emails, letters, phone calls, during public comment at any of our committee or council meetings, and if necessary – they will tell us through a voter repeal referendum.

Lastly, I want to emphasize that I believe HB516 is before you simply to settle a local conflict and has little to do with the merits of self-governing powers of local governments. There are a small number of individuals within the City of Missoula who are adamantly against providing protections to our LGBT community. They have been unsuccessful in garnering popular support for their cause within the City, so they come to you to strip a RIGHT away from EVERY self-governing local government.

Please vote no on HB516.

I will gladly answer any questions the committee members might have.

Respectfully,



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