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March 9, 2022

The Honorable Thomas Stevens, Chair  
House Committee on General, Housing and Military Affairs  
Vermont Legislature  
Statehouse  
Montpelier, Vermont

RE: H.329, an act relating to amending the prohibitions against discrimination

Dear Chair Stevens and Members of the Committee:

Thank you for the opportunity to provide this testimony and follow-up. An important question was raised in Committee discussions yesterday, March 8, 2022, concerning the necessity of codifying existing case law. These discussions pertained specifically to the following proposed amendments to the Fair Employment Practices Act, 21 V.S.A. § 495:

(vi) *the conduct occurred outside the workplace.* See Line 1, Page 5, Draft 2.1 of H.329;

and

*j(1) the provisions of this section shall be construed liberally to accomplish its remedial purposes and any exceptions and exemptions to the provisions of this section shall be construed narrowly in order to maximize the deterrence of discriminatory behavior; and...See Line 18-21, Page 4, Draft 2.1 of H.329.*

And the counterpart in 9 V.S.A. § 4501 of the Draft Bill.

I know the Committee understands that the “workplace” of many Vermonters is not confined to a physical building. Not only do people work remotely but much work occurs through emails, text messaging and phone calls. Furthermore, many perpetrators of harassment will engage in disturbing and unlawful behavior outside the physical workplace and thereby create a hostile environment for their victims in the workplace, especially if they are in a position of authority. While the law is pretty strict for employers when their supervisors and managers engage in harassment, harassment between co-workers, on or off site, still require that an employer know or have reason to know of the harassment and failed to address it before it is liable.

Current case law as well as guidance from the Equal Employment Opportunity Commission state very clearly that harassment does not have to occur at work for it to be actionable. See

[Harassment - FAQs | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#).

As for construing the anti-discriminatory laws liberally, Vermont Courts have strongly held that remedial statutes should be liberally construed. In *Washington v. Pierce*, the Vermont Supreme Court stated, “ We recognize that, “[a]s a remedial statute, the [VPAA] must be liberally construed in order to suppress the evil and advance the remedy intended by the Legislature.” 2005 VT 125, ¶ 13, 179 Vt. 318, 895 A.2d 173, citing to *Human Rights Comm'n v. Benevolent & Protective Order of Elks*, 2003 VT 104, ¶ 13, 176 Vt. 125, 839 A.2d 576. And in 2006, the Vermont Supreme Court held again that the Public Accommodations Act is to be liberally construed. See *Department of Corrections v. Human Rights Com’n*, 2006 VT 134, ¶ 3, 181 VT 225, 917 A.2d 451.

The question that then remains is:

**Why should this Committee and this Legislature bother to codify existing case law?**

Because the average Vermonter does not engage in case law research and cannot afford to hire an attorney to conduct research and train them on the law. Policies and trainings are developed often times by non-attorneys who rely on statutory language. It is incredibly helpful to Vermonters to look to the law and know their rights and responsibilities.

We know that prevention is the best tool to eliminate harassment and as such, the statutes should conform to the case law. This in fact can be more effective than enforcement.

I’m happy to answer any additional questions that you may have and thank you all for your dedication and commitment to moving this very important bill forward.

Sincerely,

*/s/ Bor Yang*

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