

Background

Openness and inclusion are fundamental values for the City of Columbus. Our city has the second highest number of highly-skilled New Americans, including Somali, Latino, and Asian communities, in the nation.ⁱ Our community's commitment to the LGBT community has earned multiple "best city" rankings.ⁱⁱ Our city is a top-ten location for women entrepreneurs.ⁱⁱⁱ Our community offers one of the best places in the nation for African American families.

The Columbus City Code reflects this openness and inclusion, providing many protections against discrimination. But these protections are still a work in progress – and that hard-won progress may be amended or repealed at any time by an ordinance. Difficult as it may be to imagine, that very thing has happened in our lifetime.

How, then, should we approach public policy issues that address core values and fundamental rights in our community? Because of the history of piecemeal constitutional protections and legislative actions, and the instability of protections based solely on legislative action, staff recommends that fundamental rights such as equality and non-discrimination may be appropriately addressed in the charter.

Issue Overview – Brief Discussion of Constitutions, Laws, and Fundamental Rights

Our nation, states, and cities have long struggled to assure full political and civil rights for all. Too often, this struggle's history has been one of fits and starts at the legislative level and piecemeal provisions in our founding documents – leaving too many people hidden in the long shadow cast by discrimination based on race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, family or military status. In the absence of an unambiguous declaration of rights and prohibition on discrimination in the US Constitution, the fragmentary process of protecting the rights of all Americans continues to this day.

In 1787, the United States Constitution placed in the hands of the several states the right to establish voter qualifications – and apportioned representation in the Congress and direct taxes "...by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."^{iv}

After ratification of the U.S. Constitution, only the state of New Jersey allowed women to vote. The New Jersey state constitution extended the right to vote to "inhabitants" – which allowed the New Jersey assembly to pass a law expressly allowing suffrage for women in 1797, only to rescind that right in 1807 as payback for a political loss.^v The lack of clear protections in the state's constitution allowed one political leader to use the power of the New Jersey assembly to disenfranchise half the residents of the state.

Ohio's first constitutional convention did not seriously consider universal suffrage. Over one hundred years later during the 1912 Ohio constitutional convention, an amendment to extend the suffrage to

women was proposed, but was rejected by the voters.^{vi} Ohio did not remove its archaic and discriminatory exclusion of women from voting until 1953.

The first U.S. Constitutional amendment to abolish discrimination based on sex was proposed in 1923, shortly after ratification of universal suffrage. The Equal Rights Amendment was introduced every year for forty-nine years. In 1970, Shirley Chisholm, the first African American woman elected to the US House of Representatives re-introduced the Equal Rights Amendment. As that great unbought and unbossed leader said in 1970,

“Federal agencies and institutions responsible for the enforcement of equal opportunity laws need the authority of a Constitutional amendment. The 1964 Civil Rights Act and the 1963 Equal Pay Act are not enough; they are limited in their coverage...

“Evidence of discrimination on the basis of sex should hardly have to be cited here... Its elimination will involve so many changes in our State and Federal laws that, without the authority and impetus of this proposed amendment, it will perhaps take another 194 years. We cannot be parties to continuing a delay. The time is clearly now to put this House on record for the fullest expression of that equality of opportunity which our founding fathers professed. They professed it, but they did not assure it to their daughters, as they tried to do for their sons.”^{vii}

After forty-nine years of advocacy, the Equal Rights Amendment was passed by Congress in 1972. While Ohio joined thirty-five states in ratifying the amendment, it was never ratified by the required 3/5th of the states. To this day, legislation like the Lilly Ledbetter Act attempts to chip away at sex discrimination due to the lack of this constitutional protection.

Ohio has an equally checkered history of extending civil and political rights to African Americans. Ohio’s first constitution, adopted in 1802, limited voting rights to white males, 21 or older, who owned property, paid taxes, or worked on roads.^{viii} During the state’s constitutional convention, suffrage for African-American men was defeated by a single vote.^{ix}

Despite these provisions, John Mercer Langston was elected a Lorain County township clerk in 1855 – winning an office for which he could not vote. Mr. Langston was the first African-American elected official in the United States, a full twenty-five years before the Fifteenth Amendment began the long process of extending the franchise to all Americans.^x

In 1912, Ohio voters rejected a constitutional convention recommendation that the word “white” be removed from voter qualifications was proposed.^{xi} Eleven years later, voters approved the removal of the word “white” in the constitution.

Ninety-seven years after all Americans earned the right to vote, the Twenty-fourth amendment to the Constitution banned the poll tax – one of many egregious attempts to block equal access to the ballot

box. To this day, partisan wrangling over voting rights and restrictions at the state level demonstrates the limitations of that and other amendments.

Issue Overview – Discrimination, Equality, and the Columbus City Charter

We have previously noted that charters reflect the unique social, political, cultural and economic histories of their city. While charters may address some issues that are purely local and temporary, charters also address issues that will remain both universal and relevant because they relate to challenges inherent to local government.

The Columbus City Charter demonstrates these straightforward facts. Like many charters of the early 1900's, ours was very focused on combating the political spoils system, corrupt ward politics, and lack of checks and balances in city government.

In response, the citizens of Columbus adopted a progressive city charter which included the following:

- A civil service system for city employment, including specific protections against undue political influence and discrimination based on political beliefs;
- A legislative body elected by the entire city and accountable to every citizen, along with provision for the initiative, referendum and recall; and
- A separation of municipal powers among the mayor, city attorney, city auditor, and city council – all elected in nonpartisan elections.

The framers of our charter were wise enough to provide a framework for addressing these enduring political problems – and that framework remains necessary, as we see in political scandals throughout the country.

While our charter “got it right” in many regards, our city has not afforded the same civil rights protections that the framers provided for political rights.

Like the Ohio Constitution of 1912, the Columbus City Charter adopted in 1914 did not recognize universal suffrage. Columbus voters remedied the exclusion by a charter amendment in 1917 – three years before universal suffrage was amended to the US Constitution. Other civil rights protections came much later.

The city enacted a protected-class employment anti-discrimination code in 1971, covering race, sex, religion, color, or national origin (Ordinance 1524-71). Despite gains for women, African-Americans, and veterans, protections for the LGBT community lagged.

In 1973, Council adopted an ordinance expanding and updating the discrimination protected classes to include race, sex, religion, color, national origin, sexual orientation, and veteran status. Former-Mayor

Tom Moody vetoed the ordinance, stating it contained a “drop of poison.” He was supported by then-City Attorney James Hughes, who stated that the ordinance promoted homosexuality and would cause problems with the police and fire department.^{xii} That same year, LGBT activists filed the first of 18 permits to march on West Broad Street – all of which were rejected. In 1974, Council adopted a less-comprehensive ordinance that, for the first time, extended protections against discrimination in housing and public accommodations based on sexual orientation.^{xiii}

In 1981, Stonewall Union – now known as Stonewall Columbus – held the first Pride Parade in Columbus. Of the hundreds of participants, many were so justifiably fearful of attack, discrimination and intimidation that they wore bags over their heads in the march.^{xiv}

In January of 1984, former-Mayor Dana “Buck” Rinehart issued an administrative policy banning discrimination in city employment based on race, color, religion, national origin, sex, age, ancestry, handicap or Vietnam-era veteran status. That same year, Columbus City Council voted down an ordinance that would have banned discrimination in employment based on sexual orientation.^{xv}

Six years later, Council re-created the Community Relations Commission over former-Mayor Rinehart’s objections (Ordinance 2065-90). For the first time that staff could identify, the ordinance established, in city code, protection against discrimination in city services based on race, color, religion, national origin, sex, age, marital status, political orientation, sexual orientation or handicap.

On December 14, 1998, Columbus became the first city in Ohio to offer domestic partner benefits for all city employees. Within two weeks, a referendum, led by a local central committee member and anti-LGBT activists, was underway. In less than 30 days, the group collected 10,023 signatures on referendum petitions. The board of elections validated 8,400 signatures, requiring Council to either repeal the ordinance or place it before voters. On February 8, 1999, less than two months after passing the historic ordinance, Council was forced to repeal the legislation – had the referendum effort been successful, all future consideration of equal benefits would have required approval at the ballot box.^{xvi}

Thanks to Mayor Michael B. Coleman, limited domestic partner benefits were offered by administrative action beginning in July 2, 2004, though the city did not pay any portion of the premiums. Domestic partner benefits were extended by ordinance to all city employees in 2010 – twelve years later.^{xvii}

In the intervening years, Council passed multiple ordinances expanding non-discrimination to additional protected classes, yet the City Code is still not wholly inclusive; and the city charter does not address civil rights protections.

Common Practices

A review of the nation’s thirty (30) largest cities, along with Akron, Cincinnati, Cleveland, Dayton, Toledo, and Youngstown, reveals that twenty-two (22) cities have directly addressed equality or non-discrimination in their charters. These thirty-three (33) charter provisions vary widely, from prohibitions

on discrimination in housing or contracts to a full declaration of political and civil rights. While most reflect historic reactions to local issues, more recent charter amendments such as the city of Detroit attempt to address the issue fully.

Cities that fully address equality and non-discrimination tend to focus on two core governmental functions – access to city services and city employment. In both instances, a city’s officers, employees, contractors and agents are prohibited from denying access to city services or equal employment opportunity on the basis of a specific set of protected classes.

Much like the City of Columbus, cities with more comprehensive charter provisions address discrimination based on race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, family or military status.

These cities provide a clear precedent for charter-based protection of civil and political rights, especially in light of inadequate state laws.

Conclusion

As Harvey Milk, the most famous LGBT elected official in the United States, said, “It takes no compromising to give people their rights. It takes no money to respect the individual. It takes no survey to remove repressions.”^{xviii} It does, however, take action.

The history of our nation, state, and city demonstrate the volatile and often-incomplete nature of legislative civil and political protections, while there is ample evidence of other cities addressing equality and non-discrimination in their charters.

No city ordinance or charter provision can change hearts and minds – but our charter can reflect our fundamental value of equal protection in the most permanent form available to our local government. Unlike an ordinance or resolution, a charter provision assures that only a vote of our citizens can alter the foundational ideals of equality and non-discrimination that make us an open, inclusive city.

Based on the foregoing, staff suggests that this Commission seriously consider recommendation of an equal rights and non-discrimination amendment to the Charter of the City of Columbus.

EQUAL RIGHTS AMENDMENT

CITY	HOUSING?	PUBLIC LODGING?	CITY EMPLOYMENT?	CITY SERVICES?	OTHER?
Akron			YES	YES	
Austin					
Baltimore					
Boston					
Charlotte	YES			YES	
Chicago					
Cincinnati					
Cleveland				YES	
Columbus					
Dallas			YES	YES	
Dayton			YES		
Denver			YES		
Detroit					YES
El Paso			YES		
Fort Worth					
Houston			YES		
Indianapolis					
Jacksonville					YES
Las Vegas					
Los Angeles			YES		YES
Louisville					
Memphis			YES		
Milwaukee					
Nashville-Davidson			YES	YES	
New York			YES	YES	
Oklahoma City	YES	YES	YES	YES	
Philadelphia			YES	YES	
Phoenix			YES		
Portland					
San Antonio					
San Diego			YES		
San Francisco		YES	YES		YES
San Jose			YES		
Seattle			YES		
Toledo			YES		
Washington					
Youngstown					

Endnotes

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- ⁱ http://d2fy1sc0f5svw4.cloudfront.net/Diverse_by_Design_2012_FINAL.pdf
- ⁱⁱ <http://www.columbusunderground.com/columbus-ranked-as-1-up-and-coming-gay-city-of-2011;>
<http://thelantern.com/2013/09/ohio-state-ranked-top-25-lgbt-friendly-campuses/>
- ⁱⁱⁱ http://www.bizjournals.com/columbus/morning_call/2013/03/columbus-ranks-no-7-for-female-founders.html
- ^{iv} U.S. Constitution, Art. II, §3
- ^v <http://www.heritage.org/initiatives/first-principles/primary-sources/new-jersey-recognizes-the-right-of-women-to-vote>
- ^{vi} <http://guides.law.csuohio.edu/ohioconstitutionamendmentstable>
- ^{vii} <http://www.americanrhetoric.com/speeches/shirleychisholmequalrights.htm>
- ^{viii} ARTICLE IV. OF ELECTIONS AND ELECTORS.
 section 1. In all elections, all white male inhabitants above the age of twenty-one years, having resided in the State one year next preceding the election, and who have paid or are charged with a State or county tax, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county or district in which he shall actually reside at the time of the election.
 sec 2. All elections shall be by ballot.
 sec 3. Electors shall, in all cases except treason, felony or breach of the peace, be privileged from arrest, during their attendance at elections, and in going to and returning from the same.
 sec 4. The Legislature shall have full power to exclude from the privilege of electing, or being elected, any person convicted of bribery, perjury, or any other infamous crime.
 sec 5. Nothing contained in this article shall be so construed as to prevent white male persons, above the age of twenty-one years, who are compelled to labor on the roads of their respective townships or counties, and who have resided one year in the State, from having the right of an elector.
- ^{ix} http://www.ohiohistorycentral.org/w/Ohio_Constitutional_Convention_of_1802?rec=523
- ^x AFRICAN-AMERICAN SUFFRAGE, Charles A. Kromkowski, University of Virginia, Dictionary of American History, Stanley Kutler, ed., (Charles Scribner’s Sons, 2002)
- ^{xi} <http://guides.law.csuohio.edu/ohioconstitutionamendmentstable>
- ^{xii} “Columbus job rights measure dies,” The Advocate, February 1974.
- ^{xiii} <https://www.youtube.com/watch?v=NQotjSKjdIE>
- ^{xiv} <http://wexarts.org/blog/stonewall-days-columbus;> <http://douglaswhaley.blogspot.com/2012/06/history-of-gay-rights-in-columbus.html>
- ^{xv} NEW GAY LEADER SEES A LOT OF WORK AHEAD, Columbus Dispatch, The (OH) - Sunday, August 4, 1985.
- ^{xvi} CITY COUNCIL REPEALS 'DOMESTIC PARTNERS' ORDINANCE, Columbus Dispatch, The (OH) - Tuesday, February 9, 1999.
- ^{xvii} COLUMBUS CITY WORKERS - BENEFITS OK'D FOR DOMESTIC PARTNERS, Columbus Dispatch, The (OH) - Tuesday, November 23, 2010.
- ^{xviii} Smith, Raymond A. and Donald P. Haider-Markel (2002). Gay and Lesbian Americans and Political Participation: a Reference Handbook.