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Fighting for Fairness: The History of Kentucky's Local Movements to Enact Fairness Ordinances in 1999

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FIGHTING FOR FAIRNESS: THE HISTORY OF KENTUCKY'S LOCAL MOVEMENTS TO ENACT FAIRNESS ORDINANCES IN 1999

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By

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ABSTRACT

This CE/T project explores the histories of the local movements for fairness ordinances which transpired in Kentucky in the year 1999. Fairness ordinances expand local civil rights protections on the basis of 'sexual orientation' and sometimes 'gender identity' to include lesbian, gay, bisexual, and transgender (LGBT) peoples and usually protect in the areas of employment, housing, and public accommodations. Four communities in the state considered such laws in 1999: Greater Louisville, Lexington-Fayette, the City of Henderson, and the City of Bowling Green. This thesis takes a holistic approach towards the history of these movements, exploring the procession of chronological events, arguments for and against, and reactions to passage. In the conclusion, these four localities are briefly analyzed together for what each contributed to the 1999 events and as well as for what each teaches about the state of the overall LGBT rights movement in Kentucky.

Dedicated to my parents, Michael Bennett and Margaret Bennett, for always encouraging me to go above and beyond and for teaching me to think freely.

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CHAPTER 1

GREATER LOUISVILLE

Equality remains just out of reach for many in the Commonwealth of Kentucky. No state law provides protection from one who seeks to abridge the civil or social liberties the Constitution idealistically guarantees. No laws at the state level prevent acts of oppression, often justified in the collective names of God, Christianity, the Bible, and morality, directed at relegating certain individuals to second-class citizenship. It does not matter that these individuals hold United States citizenship; nor does it matter that they reside in Kentucky, for civil rights law, whether state or federal, does not apply. They identify themselves as possessing a lesbian, gay, bisexual, or transgender (LGBT) sexual orientation and, as such, do not adhere to the socially or morally acceptable construction of gender norms prescribed by the majority heterosexual society. The dominant culture defines them and their lifestyle as deviant which, in turn, makes them a dangerous, moral threat to humanity. For this reason, the majority subjects them to prejudice and discrimination in their everyday lives. To many of these Kentuckians, equality is nothing more than an empty promise.

Prior to 1999, the word "many" would not have sufficed as an accurate descriptor for those facing discrimination in Kentucky's (LGBT) community. Instead, only the

word “all” could describe this group, for virtually everyone that identified themselves as falling under this umbrella had no rights outside of the political spectrum. In this year, though, a wave of civil rights, entirely novel in Kentucky, swept across the State affecting local governments and their constituents in a domino-like fashion as multiple localities passed measures popularly referred to as “fairness ordinances.” The first ordinance passed in January of 1999 and addressed discrimination in the City of Louisville, though in a more limited scope than in the areas that followed its lead in the same and subsequent years.

After more than a decade of trying, in 1999, the movement for fairness in Kentucky succeeded for the first time ever in the state’s largest city, Louisville, and quickly moved to the surrounding Jefferson County.[*] Not only did the passage of the fairness ordinances in Greater Louisville guarantee a significant portion of the LGBT population government protection from discrimination and, if victimized, legal recourse in the areas of employment, housing, and public accommodations, but the movements to enact these ordinances also profoundly shaped the State’s political and movement culture. The mere proposal of instituting a local fairness ordinance drew impassioned response from both opponents and proponents, which these groups expressed through several mediums including, among others, newspaper editorials, public hearings, protests, marches, rallies, advertisements, and mailing campaigns. Its passage inspired LGBT communities in other localities and evoked reactionary measures within the State legislature, pinning proponents against opponents in the bicameral lawmaking body. The ordinances influenced commission elections causing a member to lose his seat, and like

[*] When referred to collectively, Louisville and Jefferson County will be called “Greater Louisville.”

all hot topic issues, the debate played out in the judicial system in the form of a lawsuit opponents filed in federal court to challenge the newly instated civil rights measure.

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THE LEGISLATIVE BATTLE

Until the City of Louisville and Jefferson County governments merged on January 6, 2003 creating Metro Louisville,[1] the city operated under a "mayor-council form of government" where the twelve-member legislative branch, the Board of Alderman, held a check on the executive, the mayor, and managed the responsibility of adopting ordinances for the city, subject to mayoral veto power.[2] Proponents for a local anti-discrimination measure on the basis of sexual orientation first attempted to propose an ordinance in the mid-1980s. The Louisville and Jefferson County Human Relations Commission, acting under pressure by the Greater Louisville Human Rights Coalition, voted in favor of broadening the scope of the city's existing civil rights protections to include sexual orientation as a protected class in March of 1986.[3] This effort, though, "mired in claims" that discrimination on the basis of sexual orientation "did not occur," partially because those victimized refused "to 'out' themselves." Since proponents could show little evidence of discrimination, opponents deemed legal protection "unnecessary."[4] This, though, created a cyclical type of discrimination. If one self-identified as an out homosexual, he or she could face discrimination without legal recourse because no protections had been promulgated into law. However, if no one outed his or herself for fear of discrimination without remedy, meaning that no visible evidence of discrimination existed, opponents could claim that discrimination did not occur, as they did for the entire Greater Louisville movement. Because of this, the Board

of Alderman inevitably "chose to ignore the vote" of the Human Relations Commission and did not take up the issue at that time.[5] While the lack of evidence may have legitimated the Board's inaction and the opposition stance in this instance, later, even when ample evidence did exist, opponents often employed this very same argument and urged for any measure's defeat on these grounds.

In 1991, proponents for an ordinance again brought the issue to the Board, which, this time, agreed to hear the measure, probably due to a change in the Board's makeup. When the Board introduced the legislation late in the year on November 12, 1991, seven Alderman initially supported it, a number great enough for passage.[6] Alderman Paul Bather, however, withdrew his vote "under apparent pressure from his employer,"[7] and two other sympathetic Alderman lost their primary elections, therefore dwindling support for the measure.[8] As the ordinance progressed from introduction to voting, members on the Board made the decision to table the legislation that year, thus delaying the vote originally scheduled for the 23rd of December.[9] When this occurred, a newly-founded gay-rights advocacy group in Louisville called the Fairness Campaign, an instrumental organization throughout the entire fairness movement, lobbied extensively and successfully to revive the ordinance from its moribund state.[10] On the other side of the spectrum, Frank G. Simon, a Louisville area doctor, led the opposition by organizing against both the ordinance and the Fairness Campaign. His groups, the Freedom's Heritage Forum and the American Family Association, used "mailings and a telephone network to mobilize its members."[11] His efforts proved successful when the Board of Alderman, after holding at least one public hearing on the matter,[12] defeated the fairness ordinance on August 25, 1992 by a vote of eight to four.[13] Simon, meanwhile, would

continue his movement in the future and continued to play a prominent role opposing the Louisville and Jefferson County revived fairness efforts in 1999 and in 2004.

Proponents would try again in 1995, with a scaled back version covering just employment, only to lose once more on March 28, 1995 by vote of seven to four, sparking a protest in the Aldermanic chambers that concluded with arrests of twenty-three involved demonstrators.[14] A fairness ordinance would not come up for another vote for two years. At this time, in September of 1997, the proposition suffered an embarrassing and disheartening defeat at the hands of the Alderman, only receiving three votes of support with two abstentions, a considerable setback for the proponents' cause.[15] This vote sparked similar peaceful protests to those conducted in 1995. Regardless of the demonstration's peaceful nature, it resulted in almost twice the number of 1995 arrests, totaling fifty-two.[16] In both 1995 and 1997, the city heard testimony from both sides of the debate during public hearings, but, despite these, many Alderman maintained that "they saw no compelling evidence that discrimination" existed in the city.[17]

Although supporters of a fairness amendment to the City of Louisville's civil rights ordinance had suffered four defeats, three of them in a single decade, their headstrong dedication pressed them to continue their cause. As Erlene Grise-Owens, et al. documents:

> Supporters wearing t-shirts and buttons supporting Fairness attended every Board of Alderman meeting from 1992 forward, even when the issue wasn't on the agenda, to remind the Board that the issue was still present. Postcards were available for supporters to sign and send to their Alderman or Alderwoman. Hundreds expressed support by posting 'Fairness Does a City Good' and "Fairness = Everyone" yard signs throughout the city and county, beginning in 1997.[18]

Movements such as these eventually moved the Board to introduce the measure again on January 12, 1999.[19] This time, however, in what Alderman Reginald Meeks called a "politically astute move,"[20] the Fairness Campaign and other sponsors introduced the measure as three separate ordinances, each covering a different area of discrimination based on sexual orientation or gender identity. When brought before the Board for the third and final time, one ordinance addressed the area of employment, another dealt with housing, and the final attended to discrimination in public accommodations.[21] Sponsors of the anti-discrimination edict apparently split the measure understanding that employment had the best opportunity to gain a favorable vote while an attempt to extend protections in the other areas may have led to yet another disappointing failure.[22] The Fairness Campaign and other supporters appear to have made the right decision splitting the civil rights law as a "special review committee," on the 19th of the same month, only recommended the Board pass the ordinance that prevented oppression in the employment sphere. The fact that the employment measure had any support at all, though, does show a shift in thought and ideology considering that an employment only measure failed just four years earlier. The city body would still consider the other two measures in a vote scheduled for January 26, 1999, but from the beginning, these were widely expected to fail.[23]

Almost immediately after the Board agreed to place the trinity of ordinances on its agenda for consideration, both proponents and opponents vied to make their case heard, dominating many different media outlets with their messages. Both groups had organized previously so their ranks grew quickly. Demonstrating how passionately these activists worked to get heard, Alderman president Steve Magre stated that the Board's

opinion phone line averaged a call every fifteen seconds. In addition to these calls, which numbered over 3,000, the Alderman also received large amounts of mail expressing opinions and encouraging action.[24] The volume of correspondence the Alderman received could testify to a number of things. The large volume may be explained by the Board's decision not to hold a public hearing on the matter stating that "no amount of public testimony would change anyone's mind."[25] Likewise, it may have merely evidenced the controversial nature of the issue, or it could demonstrate a combination of the two. The tallies from these messages do definitively show, however, that those opposed to the fairness ordinance's passage mounted their campaigns in historical fashion with hopes of securing another victory, undoubtedly having grown accustomed to stopping the measure every time before. The figures reveal that their numbers overwhelmingly outnumbered proponents in all mediums of communication the Board received.[26]

During this time, the opposition channeled their assaults through all sorts of vehicles. That winter, one television commercial, promoted by Dr. Frank Simon and this time opposition leader, Brother Jerry Stephenson, put forth such a vicious attack on homosexuals and the ordinance designed to protect them that some area channels refused to air it. David Yearwood, station manager at Louisville's WDRB, stated that the commercial "alluded…that all gay people are child molesters" when discussing his channel's decision to pull the commercial from rotation. Simon called their decision "censorship," while Stephenson said the move exemplified "the kind of bigotry out there in the media."[27] Stephenson and opponents concomitantly took to the radio, "pointing out" what they viewed as "problems" with the fairness ordinance. These advertisements

aired “primarily on Christian stations” and encouraged individuals to “call their alderman and express [their] opposition.”[28]

Stephenson, a black religious leader within the community and leader of the group African Americans for Morality and Justice, also “denounced the amendment” to the media for another reason, claiming that its success would “diminish the rights of racial minorities.”[29] Dannie Prather, writing to the Greater Louisville daily newspaper, *The Courier-Journal*, echoed this argument stating that “[r]acial minorities do not have the luxury of keeping their race to themselves,” which qualifies them as needing protection. “[B]ut gays, like heterosexuals,” he says, “have the choice of keeping their sexuality” confined to the “bedroom.” He tells that passing this ordinance will “only serve to divide [the] community…in the name of inclusion and acceptance.”[30] Many, such as Kent Ostrander, head of the Lexington group the Family Foundation, stressed another point. He and his followers sincerely felt that any law granting the LGBT community protection from discrimination constituted special rights. Much of this belief largely centered on his and his brethren’s rejection of sexuality as an innate character trait. He claimed that a “homosexual has made a sexual preference a choice…We don’t need a special law dealing with that.”[31]

Supporters of the fairness ordinance opined through the same mediums utilized by the opposition and in an equally vehement manner. Some volunteer supporters, working on behalf of the Fairness Campaign, distributed brochures around the community by going door to door in order to promote their cause.[32] According to a member of the Fairness Campaign, these individuals helped to “[demystify] the issue” of homosexuality by speaking about their lives within the community.[33] Others expressed their support in

the local newspaper. Denouncing the past decisions by the Board of Alderman and encouraging the 1999 Board to vote in favor of the proposed fairness ordinance, one man accused the 1992, 1995, and 1997 Boards of continuing "the shameful story of prejudicial discrimination of minorities…to the detriment of [Louisville's] public welfare."[34] Writer Cindy Horn, expressing similar sentiments, addressed a statement by Frank Simon which alleged that passing the ordinance "would be like spitting in God's face." She disagreed with his claim, believing that it would instead "put a smile on God's face."[35]

Civil Rights leaders like Bob Cunningham, a local leader, and Reverend Jesse Jackson, Sr., a national Civil Rights leader, criticized the racial arguments put forth by Jerry Stephenson and supported by Dannie Prather. Cunningham, a member of the Kentucky Alliance Against Racist & Political Repression, labeled the issues of racism and homophobia "inseparable." He stated that "when homophobia rises, [it] feeds the fires of racism" and that increased protections for LGBT persons would not detract from racial minorities because "broadened" rights for one group, "enhances justice for all."[36] Jackson correspondingly stated that violence, such as the "brutal murder of Matthew Shepard," proves that "hate [is] not limited to one group." Violence like this incident, he said, demonstrated the needs for protection.[37] Others echoed Jackson's violence argument, pointing out the atrocities of discrimination inflicted on the basis of sexual orientation and gender identity,[38] while others simply asserted that the fairness amendment would "only promote tolerance"[39] and guarantee "equal treatment," not "special rights."[40]

When asked to weigh in on the proposed fairness ordinance during the controversy, area businesses largely kept an ambivalent disposition. The *Courier-*

Journal reported that no consensus existed among them and that many considered it a "non-issue."[41] These sentiments were largely attributed to the provisions of the ordinance which provided that employers could still enforce a company dress code, something they could construe to prevent cross-dressing, and "designate appropriate gender-specific bathroom facilities." Furthermore, employers could hire, or not hire, on the sole basis of sexual orientation or gender identity "if one of those factors" constituted a legitimate "occupational qualification that was reasonably necessary to conduct normal business operations."[42] While some still worried that the issue may create a "springboard" for domestic partner benefits or about the government's increasing regulatory role within the workplace, Bill Stone, then president of Louisville Gas & Electric, put the issue in perspective. "Most employers couldn't care less about a person's sexual orientation," he said. "The few that do are only making a poor economic decision, because they're reducing their pool of potential employees."[43]

When the employment section of the fairness ordinance came up for a vote at its second reading in late January, it passed. On January 26, 1999, only eighteen months after defeating the measure in 1997, the Board of Alderman approved this section by an expected vote of seven to five, the slimmest majority possible.[44] This was, however, far more support than the law had in 1991. This rapid reversal by the Board of Alderman raises an interesting question: What caused the significant shift on the Board from only three supportive votes in 1997 to seven supportive votes in 1999?

Those writing on the issue at the time largely attributed the major shift to several factors, paying specific attention to three. First, they pointed to the 1998 elections which resulted in the re-election of two pro-fairness candidates, Reginald Meeks and Paul

Bather,[45] the very same Bather that pledged his vote in 1991 before withdrawing it late in the year, leading to the ordinance's demise almost a decade earlier. In this same election, three new, pro-fairness candidates won their contest. Bill Allison, George Unseld, and Tina Ward-Pugh, a self-identified out lesbian, all gained a seat on the Board that year.[46] The election evidently did play a significant role as the proponents reintroduced the fairness ordinance "only days" after the new Alderman took their oath of office.[47] This, though, only summed a total of six votes, not enough for a majority victory.

Contemporary analysts labeled the attainment of the seventh vote, that of Alderman president Steve Magre, as the second major change that moved the ordinance from defeat to victory. Magre previously voted against the measure all three times in the 1990s before changing sides and voting in favor of the ordinance in 1999. He claimed that his change of heart occurred after people approached him following his 1997 vote and told him personal accounts about discrimination they had faced in the workplace. Disturbed that "[g]ood workers were being harassed and fired simply because they were homosexuals," Magre committed himself to ensuring protection in the workplace against discrimination he now acknowledged.[48]

Lastly, analysts pointed to the willingness of supporters of the fairness ordinance to compromise on the measure. Mostly these individuals looked at the partitioned law to demonstrate their conclusion, pointing to the fact that the board, Magre especially, would not have supported more expansive legislation with housing and public accommodations included as protected areas in a single measure.[49] These writers, though, ignored other concessions that the supporters gave that weighed on the issue with equal significance in

this regard. For one, businesses would likely have taken a more vocal role with the opposition movement had proponents not agreed to the provisions allowing employers to implement dress codes and allocate restroom facilities. Moreover, while the exemptions for religious institutions did not silence many critics in the religious right, these incontrovertibly influenced the voting of the Board members. Had the legislation not included these, it is doubtful that Louisville would have promulgated any discrimination redress at all into law in 1999.

A convergence of events at the same time that the ordinance came before the Alderman helped to draw attention to the need for expanded civil rights legislation as well. For instance, Alicia Pedreira lost her position at the Kentucky Baptist Homes for Children (KBHC) when her employers discovered that she self-identified as a lesbian. Even though the Louisville ordinance specifically exempted religious organizations such as the KBHC, this case significantly helped to raise awareness about discrimination within the workplace. Somewhat ironically, "This incident became a pivotal point for the Fairness Campaign by putting a face on discrimination." It inspired others, many of which the ordinance would protect, "to speak publicly about incidents of discrimination that they had endured."[50] Also, only a few months before the fairness ordinance came before the Alderman for the last time, the media informed the public about the shocking murder of openly-gay Matthew Shepard on October 7, 1998, a college student in Wyoming. Shepard's attackers, Aaron McKinney and Russell Henderson, bound him to a split-rail fence before severely beating him and leaving him to die.[51] His murder portrayed in a "stark image" the "brutal reality of anti-[LGBT] hate and discrimination."[52] As Reverend Jesse Jackson, Sr. pointed out in his editorial in support

of the fairness law, Shepard's murder depicted the gruesome "consequences of intolerance and hate."[53]

In its final form the fairness amendment protected against strictly workplace discrimination for sexual orientation, defined as "an individual's actual or perceived heterosexuality, homosexuality, or bisexuality," and gender identity, defined as "having or being perceived as having an identity not traditionally associated with one's biological maleness or femaleness."[54] The use of the word "perceived" in these definitions is paramount. Because of its inclusion, the legislation protected individuals from discrimination based not only on a confirmed knowledge of one's orientation or gender identity, but also on the mere suspicion that one may possess an orientation or manifest an identity not in line with the dominant, heterosexual culture's normative values. Additionally, the city ordinance contained a provision that prevented an employer from publishing job advertisements which indicated sexual orientation or gender identity preferences, a roundabout way of maintaining discriminatory practices.[55] Had the ordinance not included this provision, discrimination in this manner would quite possibly have proliferated to get around the provisions of the ordinance with no legal remedy.

With all of its protections in the workplace, however, the ordinance included several exemptions, conceding greater autonomy to those bodies otherwise in its purview. First, it granted businesses the power to enforce dress codes and restroom designations. Second, the ordinance exempted certain religious bodies and organizations; it did not apply to "a religious institution, or to an organization operated for charitable or educational purposes, which is operated, supervised or controlled by a religious corporation, association or society."[56] Lawyers employed by the city, however, felt that

the language of this section may not be as unequivocal as it looks *prima facie*. In fact, they stated that regulation of some organizations such as a "for-profit, church run bookstore," may need a court or the Human Relations Commission's interpretation, presumably because of the profit-earning nature of the company. The attorneys also pointed out groups such as the Knights of Columbus and the Masons as organizations that could fall under the scope of regulations created by the ordinance, if interpreted that way by a judicial body.[57]

Throughout the City of Louisville's movement towards enacting a fairness ordinance, there was constant speculation that the Jefferson County Fiscal Court would introduce another fairness ordinance governing county wide, with perhaps the exception of the city. While people in the area initially expected the members of Fiscal Court to introduce the measure soon after Louisville approved its ordinance, they would actually have to wait over six months for its unveiling.[58] A lot of the delay centered on an uncertainty about how the final vote would turn.

In 1999, the County utilized a different system of government than the City of Louisville. It "operate[d] under a commission form of government" which "combine[d] legislative and excutive powers" in a four member (three commissioners and the County Judge Executive) body called a Fiscal Court. Because these powers were combined, the executive claimed less authority when compared to the executive in the mayor-council system under which the City operated.[59] With only four members in the body, predicting whether a measure would pass or fail made a much easier task than with the Board of Alderman. In fact, the community knew early on that two members, Russ Maple and Darryl Owens, supported the measure, while Judge Executive Rebecca Jackson did not.

At the same time, they knew one vote, that of Commissioner Joe Corradino, remained undecided. Corradino, whose vote would determine the outcome of any fairness legislation, had previously stated that he would make a decision on where he stood regarding an ordinance by the end of July.

To help decide which side he would pledge his support, Corradino, acting alone, held six public hearings over the issue, the last of which took place in the summer months of 1999.[60] Supporters anxiously awaited his announcement, for they understood the imprudence of introducing a measure into an undecided body, knowing that if Corradino announced that he would not support the fairness amendment, the measure would have stalled in a two-against-two stalemate.[61] If this happened and the measure failed, it is likely that revitalization would have swept through the opposition movement, even potentially creating a rejuvenated movement for repeal. Therefore, supporters waited. True to his word, Corradino made the announcement that he supported expanding the fairness ordinance to cover not just employment, as Louisville's law did, but also housing and public accommodations.[62]

Around two months after Commissioner Corradino made his announcement, the Jefferson County Fiscal Court introduced a fairness ordinance to its agenda with a well-known three-vote majority on September 14, 1999.[63] Although the Fiscal Court initially scheduled the final vote on the ordinance to occur two weeks later on September 28, the measure would get delayed in the process and actually take a month before the commissioners could place a formal stamp on the bill that the community already knew would pass. Rebecca Jackson, the lone opponent and Republican on the governing body, "took advantage of a long-standing, unwritten Fiscal Court policy that allow[ed] any of

the four court members to postpone action on a pending measure one time, or for at least two weeks." She waited until 5:00 p.m. on September 27th, the date before the scheduled final vote, to issue a memorandum notifying the commissioners of her intent to utilize this policy. In her memo Jackson stated that she believed it "prudent to see the outcome of the [city] litigation* before becoming embroiled in any lengthy and costly court battle." Tony Riggs, Jackson's spokesman, however, announced that she pulled the measure because she thought it a "bad law."[64] Taking this into consideration and seeing as Hyman filed his lawsuit the day before Jefferson County even proposed its ordinance, Jackson presumably delayed announcing her use of the policy until the day before the vote so that, when she did stall the measure, she could halt it in a manner that would create the maximum spread of time between introduction and ratification.

The Judge Executive's move to delay the legislation angered both commissioners and the supportive public alike. Corradino, after calling the move "incredible" and "disappointing," stated that if he "backed off" whenever the threat of a lawsuit existed, he could not carry out his Court responsibilities. He then cited the County Attorney's approval of the ordinance to demonstrate that it could withstand a court challenge, thus belittling Jackson's motive.[65] The supportive community echoed Corradino's outrage. Some decided to communicate this indignation by protesting at the September 28th meeting with signs that read "Justice delayed equals justice denied."[66] Others expressed their anger through the *Courier-Journal*, the local area newspaper. Kris Carlton, for instance, called Jackson's move "petty maneuvering" and accused her of acting on her

* Jackson is alluding to a lawsuit filed by physician J. Barrett Hyman, a Louisville area doctor, against the city challenging its fairness ordinance on September 13, 1999.

own self-interests rather than the will of her constituents and not conducting herself as a leader should.[67] Dan Farrell, spokesman for the Fairness Campaign, captured his outrage with a single word: "childish."[68] Jackson's move hit particularly close to home with David Hartley, a gay Louisvillian. He called her action a function of her "conservative Republican politics and religious beliefs."[69] The *Courier-Journal* even spoke out against Jackson's "prerogative" in an editorial. Criticizing her reasoning for postponement, the paper opined that it hoped "the delay [would] persuade Jackson to join her three colleagues…on the side of justice for all citizens."[70]

Although many undeniably supported the Judge Executive's move, only one person either used the paper to show that support, or was the only opponent to get her piece printed. In Elaine Watson's belief, the newspaper had created an "illusion" of majority support for the issue in the first place meaning, that if the Fiscal Court were to put the measure on the ballot, it would "resoundingly [suffer a] defeat." She then employed the 'special rights' argument to demonstrate that the law could not "stand the challenge of constitutional scrutiny…because homosexuals and lesbians" already had protections against discrimination. The 1999 proposal, on the other hand, sought not equal rights, but "special privileges." For all of the above, Watson "admire[d]" Jackson for making "hard calls" and delaying the issue.[71]

Jackson's stall tactic in no way influenced the legislation's outcome; it only served to give opponents, again active and in full battle mode, more time to reiterate their arguments in the newspaper. Illustrating this, the very day Jackson announced her decision, the commissioners committed to bring up and pass the issue at the next scheduled Fiscal Court meeting two weeks later.[72] Despite this, Jerry Stephenson

resumed his vociferous condemnation on moral and religious grounds where he left off in 1999, calling the ordinance an invasion on "freedom of choice" which would "open the floodgates to the moral decay" of the region.[73] He accused the LGBT community of trying to use "civil-rights codes to solidify their lifestyle," a lifestyle "against Judeo-Christian values of the Bible."[74] Another religious leader in the area, following the same fire-and-brimstone denunciation, called the fairness legislation "a slap in the face of God."[75] Opponent Mike Trelow managed to stray briefly from the Biblical attack and went after the legislation for its possible implications before reverting back to his religious opposition. Suggesting that LGBT persons should keep their sexual orientation, a non-immutable trait in his opinion, to his or herself, he stated that the legislation would give homosexuals the "unprecedented ability to cry discrimination, whether real or imagined." He then explained the true basis of his problem with the ordinance stating that when "Biblical truth" gets removed from the "picture…humans will believe and accept" anything.[76]

While opponents continued to decry the ordinance, proponents, with the exception of denouncing Jackson for delaying the vote, largely stayed silent on the issue. Their silence probably corresponded to the fact that three commissioners had already assured its passage. Therefore, they really had no reason to expend the necessary energy or resources to argue for an already guaranteed victory. Moreover, had they spoken, it would have served no other purpose than to galvanize the opposition and exacerbate an already strained situation. Dan Farrell, however, did sing his praises for the three supporting commissioners by echoing the "Pledge of Allegiance," telling them that they were "taking a stand for liberty and justice for all."[77]

Keeping their promise on October 12, 1999, the supportive commissioners adopted the inclusive fairness measure by vote of three to one, with Jackson as the lone dissenter, in front of a capacity crowd where opponents' branded the commissioners "liars," "hell-bound," and living "on the Satanic side."[78] The law contained provisions that provided more expansive protection than assured within city limits, "plac[ing] the county ahead of the city on gay rights." Effective upon passage, it prohibited discrimination on the bases of sexual orientation or gender identity in the areas of employment, housing, and public accommodations. The ordinance defined sexual orientation as "an individual's actual or imputed heterosexuality, homosexuality or bisexuality" and gender identity as "manifesting an identity not traditionally associated with one's biological maleness or femaleness."[79] While the "sexual orientation" category maintained the same "perceived" protection as the city with the word "imputed," the Jefferson County ordinance dropped the language altogether under "gender identity." It appears, however, that the word "manifesting" served the same purpose, because whether a person actually "manifested" that identity or an employer simply ascribed an identity to him or her, a company still could not discriminate on that basis alone.

The employment provisions of the ordinance essentially echoed that of the city's law, governing hiring, firing, promotions, and pay.[80] The housing section, meanwhile, prevented discrimination in "[n]early every conceivable real-estate transaction;" however, if a person neither used an agent nor advertised the sale of their property, he or she could claim an exemption under the law.[81] The County's measure also included other exceptions, such as religious exemptions, which read similar to those in Louisville but in a seemingly more limited nature. They, for instance, could exclude employees on

the bases governed by the ordinance only if the position required "some special expertise related to religion." They could not, conversely, discriminate when hiring other positions, such as a custodian or clerk, regardless of whether or not the lifestyle violated their religious mores.[82] The "public accommodations" provision included exemptions providing that it did not govern "private clubs, the YMCA and YWCA," where gender segregated dormitory housing existed, and hospitals, nursing homes, and prisons that housed men and women in separate areas.[83] Enforcement procedures also resembled those in Louisville. In both areas, for instance, aggrieved parties filed complaints with the Louisville and Jefferson County Human Relations Commission. Jefferson County prescribed fines up to $50,000, however, whereas Louisville only offered fines up $10,000 if the Human Relations Commission found evidence of discrimination.[84]

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AFTERMATH

Joe Corradino clearly understood the potential implications of aligning himself with the pro-fairness side of the ordinance issue. As the only commissioner facing an election that year, he alone faced the probable knee-jerk response from angry voters before the controversy surrounding the topic had a chance to abate.[85] Early on, however, he made his willingness to continue as well as his stance on the law crystal clear. "I am not afraid of doing the right thing," he said. "I intend to face the voters…When there is discrimination, public officials need to address it."[86] His opposition made their outrage equally conspicuous. "We will go after Joe hard," Jerry Stephenson told the *Courier-Journal*, and true to his promise, he founded the Organization of Christian Democrats, a group defined by its goal of defeating the commissioner, regardless that he identified as a

member of their own party. The group mailed over 10,000 leaflets addressed to "All God fearing, Bible believing Democrats," which contained rhetoric reminiscent of the Strom Thurmond days of the Southern Democratic Party. In addition to supporting "special rights" with his October vote, they accused in the leaflet, Corradino fell into the "radical, anti-God element…trying to take over *our* Democratic Party."[87]

On November 2, 1999, Stephenson and his group prevailed. Despite raising more than three times the amount of money than his relatively-unknown Republican opponent, Barbara Davis, she defeated him by nearly 14,000 votes. Both candidates called the turnout of the election a referendum on the ordinance, as they and the public had labeled Corradino's vote on the fairness measure the "pivotal" topic going into Election Day.[88] Corradino, though, may have fallen victim more to the views of a minority of his district that simply turned out in higher numbers than the majority, than a referendum vote. After all, a Bluegrass State Poll reported that as early as 1996, 65% of Louisvillians favored a fairness amendment.[89] While it is possible that the 45% opposed disproportionately lived in Corradino's district, this is not the only possible explanation for his defeat. As Jefferson County Democratic Chairman Steve Horner stated before the election took place, because Corradino was one of the few candidates facing a contested election that year, an expected light showing meant that those people "motivated to vote against someone" would likely turn out in higher numbers.[90] In hindsight, Horner appears to have presciently predicted the patterns and results of Election Day. Considering that only 29% of registered voters cast a ballot on that Tuesday, Corradino's tenure as a commissioner quite possibly ended as a casualty of disinterest.[91]

Immediately upon proposal and renewed upon passage, the question was posed as to whether or not the Jefferson County legislation would apply within city limits. Typically, county laws did govern the city if the Board of Alderman had not already enacted a similar measure, but the city had already approved an ordinance of its own and previously possessed different existing civil rights laws than that of the county.[92] County Attorney Irv Maze believed that the ordinance would apply, but City Law Director Bill Stone claimed that he needed time to "review the county measure before determining whether it [would] be enforced in Louisville."[93] This dispute between the city and county governments ultimately resulted in the city filing "a declaratory judgment action in Jefferson Circuit Court seeking a resolution to the controversy" on November 10, 1999 which would eventually take on the style *Rogers, et al. v. Fiscal Court of Jefferson County, et al*.[94] On March 10, 2000, the Court ruled that the Jefferson County ordinance, while valid, did not apply "within the incorporated portions," i.e. Louisville, "of Jefferson County," thus ruling against the county Fiscal Court and intervening parties, Rogers and Chester,[*] both of whom claimed a personal impact from the outcome of the action and, therefore, interest in the litigation.[95] The county subsequently appealed the action citing a Kentucky statute that applies county ordinances countywide. In its counterargument, the city dismissed this statute as inapplicable to civil rights measures because it did not specifically address such laws.[96] The state appellate court disagreed, stating that had the state legislature wished for such a narrow reading of the statute as the one the city had suggested, "then the legislature would have stated so."[97] Therefore, the Kentucky Court of Appeals dismissed the city's argument and rendered a verdict in the Appellants' behalf

[*] For brevity, these parties will hereon be referred to as "the county."

on June 8, 2001, while remanding the case "for the entry of a judgment declaring the county ordinance to be enforceable throughout the entire area of the county, including the City of Louisville and other incorporated areas."[98] Mayor David Armstrong stated that the city would fully comply with the federal court order.[99] Therefore, within a little over a year, the Court had deemed the more expansive civil rights protections of the Jefferson County fairness ordinance applicable within all of the county, including city limits.

The *Rogers* lawsuit was but one of three that the city and county faced regarding their fairness ordinances, though.[100] On September 13, 1999, the day before Jefferson County had scheduled to hold their first reading on its fairness ordinance, J. Barrett Hyman, a Louisville area gynecologist, filed suit against the City of Louisville challenging its fairness ordinance. Hyman claimed that, as a follower of Christianity, he "believe[d] that acts of homosexuality, bisexuality, transgenderism and other departures from monogamous heterosexual relations are sinful and grievously offensive to God."[101] Further, he asserted that any person who engaged in any one of the above acts exhibits "a serious lack of moral character which renders them unfit for employment in a medical practice." He sincerely felt that hiring anyone from the LGBT community would "contradict the traditional family image he seeks to convey to patients," consequently jeopardizing the character of his business.[102] Hyman additionally contended in his complaint that his religious beliefs did not align with the provisions of the city's ordinance, and as such, he would "deny employment and discharge certain persons on the basis of orientation and/or gender identity." Because of this, he claimed to face the "'Hobson's choice,' of either obeying the laws of Louisville…or obeying the laws of his conscience."[103] These contentions, Hyman claimed, made the ordinance violate his First,

Fifth, and Fourteenth Amendments in addition to some provisions of the Kentucky Constitution.[104]

In one sense, Jackson correctly predicted that the county would "becom[e] embroiled" in a legal battle over the ordinance.[105] Then again, the American Center for Law and Justice (ACLJ), an interest group run by televangelist Pat Robertson which filed the Louisville suit, had already mailed a letter to the county in the interim period between proposal and adoption of the ordinance that vowed to bring the county into the legal skirmish if the commissioners approved the legislation.[106] After the ACLJ did just that, a federal judge consolidated the cases in March 2000.[107] A little over a year later, the Court would rule on a recently-filed Hyman motion that requested to supplement the record with an affidavit alleging that he had tried to run a preferential advertisement for an employee in the local newspaper, which rejected the ad because of the ordinance. Also, it claimed that, in the process of interviewing for this advertised position, he "inquired into two applicants' sexual orientation intending" to consider this "in reaching an employment decision."[108] Against the Defendants' objection that the Plaintiff filed the affidavit in an untimely manner, United States District Court Charles R. Simpson, III admitted the pleading before subsequently ruling against Hyman on all claims.[109]

This decision, though, would not stand as the final ruling on the case. In fact, on appeal, the United States Court of Appeals made apparent that Hyman and his counsels' decision to bring the case without first having to consider a potential employee's sexuality when hiring proved a grievous procedural error for the Appellants.[110] Taking this fact into consideration, the Court ruled on December 9, 2002 that it could not even evaluate the merits of the affidavit, filed over a year after Hyman brought the litigation

against the governments, because Hyman lacked standing to bring the lawsuit *in the first place*. At the lawsuits inception in September of 1999, the Court ruled, "Hyman did not have…an immediate or projected need to hire a new employee," and because the community knew his views on homosexuality, "he did not have any real expectation that he would have any homosexual applicants…in the future." In short, Hyman could not, at the time of filing, demonstrate "actual present harm or a significant possibility of future harm" as prescribed by the controlling precedent in the case, *National Rifle Association v. Magaw*.[111] The Court then vacated the antecedent ruling and remanded the case with instructions for dismissal "for lack of standing." For better or worse, the three judge panel ignored the merits of the case and dismissed it on procedural grounds. Although their ruling left Hyman the option to bring another suit, whether acting on his own prerogative or on advice from his counsel, he declined to do so. As a result, the question of the ordinances' future now belonged to the "newly merging Louisville government" to decide, a matter they would undertake in December of 2004.[112]

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MERGER

When the city and county governments merged in January of 2003, the area stuck with a mayor-council system much like the one that the City of Louisville had used pre-merger. Rather than seating twelve members, however, it now seats over twenty.[113] Per merger law, the newly created Metro Council, the legislative branch of Louisville Metro Government (analogous to the former Board of Alderman), had five years from the day the merger took effect to "adopt or amend" all existing laws, including the fairness ordinance. If the Council had not chosen to act on the ordinance at all, it would have

expired at the end of 2007.[114] Until that time or until the Council moved on the law, however, it would stay in effect and continue protecting against discrimination in the municipality.[115]

When the Metro Council did decide to reconsider the measure late in 2004, the opposition remained just as vehemently against the measure as it had in 1999, with Frank Simon again at the forefront of the storm. Opposition within the legislative body called for a referendum on the measure, with community proponents of such a move calling anything else "underhanded and undemocratic."[116] Referendum opponents, however, cried foul, stating that "civil rights law" cannot be determined through "a vote by the people who are doing the discriminating." Such a move, they said, would have the same result as having determined the issue of slavery through a referendum, i.e. "we'd still be living with it."[117] The staff attorney for the Governor's Office for Local Development, Rich Ornstein, however, had already declared the referendum issue moot, stating that it did not meet state law's established criteria.[118]

Community activists largely used the media, as they had before, to make their cases for and against the renewal of the fairness ordinance. For instance, the Jefferson County Pro-Family Coalition, or "the Jefferson County Bigotry Coalition" as one *Courier-Journal* reader titled it, [119] ran a series of commercials advertising against the ordinance, each of which depicted another "parade-of-horribles" situation that the Coalition believed could result with a re-approving vote. One, for example, insinuated the ordinance might create a situation where male scout leaders could "bunk down," or sleep with, Girl Scout members, a heterosexual relationship but lascivious nonetheless. A second depicted a mother telling a friend that she removed her daughter from public

schooling in favor of private education after her male teacher "started wearing dresses." Finally, a third advertisement simply stated that the ordinance harmed businesses, thus "discourag[ing] firms from locating" in Metro Louisville.[120]

These ads constituted fallacious attacks at best and slanderous ones at worst, as demonstrated by two events. First, Clear Channel Communications, owner of local news radio station WHAS-84, pulled the commercials from rotation. Secondly, both the Girl Scouts and Jefferson County Public Schools (JCPS) rejected their content with JCPS even calling the second ad "plain wrong."[121] The school system most likely grounded its stand against the ads in the exemptions section of the fairness ordinance. The advertisement did, after all, completely ignore the provision that allowed for employer mandated dress codes which precluded any event like the one the ad displayed. As for the validity of the third commercial, another reader turned writer contradicted its claims, pointing out that if its assertions had factual foundations, then why had 96% of Fortune 100 and 410 of the Fortune 500 companies amended their employment codes with non-discrimination policies by 2004?[122] The writer made a fair point. If indeed LGBT rights did harm business, would these companies not have continued to actively discriminate? Further, if an ordinance did harm business as the ad suggested, would businesses not have taken a more vocal role in opposing the ordinance in the first place instead of largely maintaining an ambivalent position? Considering that today the Fortune Company numbers are even larger with a significant number now including gender identity under their protections and in view of the fact that local businesses did not seem overly concerned with the legislation, logic answers these questions affirmatively.[123]

Others made their opinions apparent at a public hearing held on the matter, a difference in proceedings from 1999. The opponents brought in Alveda King, one of the late Dr. Martin Luther King, Jr.'s nieces, from Atlanta to appear as their star speaker. She testified before the Metro Council that the LGBT community did not "deserve the civil-rights protections because homosexuality does not qualify as an 'immutable characteristic'" like race. For that reason, she called it "unfortunate" that people espoused the issues of LGBT discrimination with discrimination against other minorities, essentially making the same argument that Stephenson made during the prior debates.[124] Also, like Greater Louisville's religious figureheads, King's values rooted themselves in a Biblical origin, and she referenced its condemnations of homosexuality frequently.

Drawing another parallel to the movement's history, much like Jesse Jackson had challenged Stephenson's principles in 1999, local religious leader Reverend Al Herring contested King's convictions in 2004. Herring believed it appropriate to amalgamate the struggles as both movements told a story about the fight for justice.[125] Another local minister, meanwhile, questioned the validity of her faith-based opposition. Praising the good of the fairness ordinance, he criticized opponents' use of scripture as a method to promote "an attitude of prejudice and bigotry…in the name of 'faith,'" and placed its use on par with its historical employment which authenticated "everything from the oppression of women…to slavery." One simple sentence, though, captured the entire premise of his argument against King's biblical claims: "We are God's children, all of us."[126]

Dr. Frank Simon could not let the issue pass without first interjecting his opinions into the argument. He and the American Family Association of Kentucky, an

organization he headed, mailed approximately 65,000 letters to households in Metro Louisville in envelopes that read: "Warning: Very Vulgar, Not for Children." The letter told readers that LGBT peoples participate in "unhealthy and unnatural acts…too vulgar to mention," but then included a page from a medical journal that explained them in explicit detail. It even insulted Catholicism when it asked: "Remember what the homosexual priests did to the children?"[127] Recipients in the heavily Catholic community found the letter deeply offensive, and more than one wrote to express their outrage in the newspaper. Several of these described the letter as "pornographic." One called into question its truth, while another stated that she wished to shelter her grandchildren and great-grandchildren from its lewd material.[128] Others simply attacked Simon's character with one writer likening him to the Ku Klux Klan. "He deserves no better treatment than the KKK," she said. "He's as disgusting a presence, and as willful and ignorant as they are."[129]

Opposition condemnations such as these undoubtedly did more to hurt the opposition's cause than they did to help it, and on December 9, 2004, the Louisville Metro Council reenacted the fairness ordinance by a bipartisan vote of nineteen to six. Mayor Jerry Abramson signed it into the law the following day.[130] Two council members even attributed their supportive votes to the actions of the opposition movement, while another credited their behavior as proving that his past vote in 1999 was justified. Madonna Flood stated that had she not received Simon's letters and phone calls "that were full of hatred and bigotry," she would not have believed the allegations of discrimination in the community, meaning that she probably would have voted against the measure. Cyril Allgeier, in the same regard, voted in direct protest of the mailing.[131]

The vote simply readopted the text of the Jefferson County ordinance, as a court order had already determined that it applied throughout the entire county, including the City of Louisville. Because of this, the language defining sexual orientation and gender identity reads verbatim like that passed in 1999. Simon, meanwhile, refused to let his campaign drop and continued to stress the horrible consequences of the vote. Though he dropped his religious denunciations, he continued citing homosexuality's role in the perpetuation of the AIDS disease.[132]

The original movements and passages of these two fairness initiatives galvanized LGBT people all around the state into similar action, creating struggles akin to those that the Greater Louisville area had undergone. In domino-like fashion, localities all around Kentucky followed in the wake of the Greater Louisville struggles for fairness, as proponents sought to obtain ordinances in their own communities in efforts that greatly resembled the preceding, decade-long movement in the state's largest city. It appears the battle in Greater Louisville not only galvanized LGBT citizens and allies statewide, it also created the formula by which these movements would progress. In areas that subsequently considered fairness legislation in 1999 and succeeding years – Lexington-Fayette County, Henderson, Bowling Green, and Covington – the processes, the arguments, and the ordinances themselves bore a striking resemblance with those movements from Greater Louisville which started the trend.

CHAPTER 2

LEXINGTON-FAYETTE

Operating as a merged government, the City of Lexington and Fayette County[*] became the first municipality to follow in the footsteps of the City of Louisville, moving for fairness in the summer of 1999. While equally important in scope and more expansive in protection, the Lexington movement for fairness was much shorter in duration than that which took place in Louisville or any other area to follow. Whereas Louisville's movement stands at one extreme end of the time spectrum, taking over a decade before finally achieving success in 1999, Lexington's movement stands at the other. The entire process took only a little more than two weeks, only 18 days, from recommendation by the Lexington-Fayette Urban County Human Rights Commission to passage, with essentially only a week of that time spent before the Lexington-Fayette Urban County Council (LFUCC), the area's Legislative body for debate. The shorter duration of the movement, however, reveals nothing about the intricate nature of the local movement. Though fast moving, the LGBT and allied push for fairness in Lexington comes close to, if not matches, the Greater Louisville movement in complexity. News that the Urban County Council may consider an ordinance banning "gay bias," as the local newspaper framed it, first hit the media on June 20, 1999. At this time, however,

[*] For brevity, I will refer to these collectively as "Lexington."

despite the council members reporting to the local paper that they expected introduction of an ordinance that week, none had seen any text of the measure because one had not yet been delivered to them. In fact, William Wharton, the Lexington Human Rights Commission (LFUCHRC) executive director, even reported ignorance of the council's plan to hear an ordinance and stated that the commission had not discussed an anti-discrimination ordinance since September of 1998.[1] Even in 1998, however, the idea of a fairness ordinance was not entirely novel. The council, in fact, viewed a presentation from co-chairman of the Lexington Fairness Campaign and now commissioner on the LFUCHRC, Jeff Jones, five years before in 1993.[2] In that same year, the commission decided to track discrimination complaints, which would most likely have fallen under the purview of the newly proposed fairness ordinance had it existed at the time. Beginning on July 1, 1993 and lasting for the duration of a year, the commission recorded 26 separate complaints.[3] The Lexington community and council would discuss these again in depth in 1999.

Examining the issue again in 1999, the commission unanimously recommended that the Urban County Council adopt an ordinance which would add sexual orientation as a protected class to anti-discrimination laws on the day following the newsbreak. With this recommendation, Wharton sent the council a memorandum in which he detailed the commission's reasoning for supporting such an ordinance, which included the 26 registered complaints. He also stressed that the LFUCHRC did not make their proposal "lightly" and that they had considered the probable reaction of the opposing community. Wharton says that the anti-discrimination body "has as its stated purpose the safeguarding of all individuals within Lexington-Fayette Urban County from discrimination… The

commission has in the past acted to encourage and effect the equal rights of all citizens by recommending…the amendment of our enabling statutes to expand coverage by adding new protected classes."[4]

The following day on July 22 at a council work session, the Urban County Council decided by a vote of 13 to 1 with one abstention to discuss the ordinance, which became available to the public for the first time on this date. They scheduled to hear the first reading of the ordinance on July 1, 1999 with a second reading and final vote tentatively scheduled for July 8, 1999.[5] The lone vote against hearing the ordinance belonged to Councilman Fred Brown, an opponent of the measure from beginning to end. Criticizing the fact that the text of the ordinance had not been made available before the day's meeting, he stated that the ordinance dealt with a "private, personal matter" and that its ratification would "[single] out a special class of people and [give] them special rights."[6] Apparently ignoring a volume of legislation that the body had considered historically, Brown also felt that the Council should not consider a measure which the federal and state governments had chosen to ignore. In addressing Brown's concerns, William Wharton pointed out his omission by informing him that Lexington had placed an anti-discrimination law on its books before the federal government enacted its own in 1964. Running out of arguments and apparently believing that more opponents who felt the way he did were present in the small crowd watching the proceedings, Brown then asked the opponents to stand; only one did.[7] This type of across-the-board opposition became characteristic of Brown's actions throughout the legislative process and was especially conspicuous in the public hearings at which time he would attempt to employ numerous stall tactics to delay or kill the ordinance.

In its originally proposed form, the ordinance provided more expansive protection than the antedated Louisville ordinance, adding sexual orientation and gender identity as protected classes, while also taking housing and public accommodations, in addition to employment, under its purview.[8] It defined sexual orientation as "an individual's actual or perceived heterosexuality, homosexuality, or bisexuality" and gender identity as "a person's actual or perceived sex, and includes a person's self-identity, appearance or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth."[9] The wording of the definitions, especially with regard to their usage of "perceived" and the gender identity definition as a whole, sparked controversy among both the community and the members of the council. Because of this, these definitions would change before the bill made it to its final form, and the commissioners would approve exemptions other than those already included in the original text to help address some of the opposition's objections.

The original exemptions from the first draft included "small rooming houses, private clubs, and businesses where religion is 'a bona fide occupational qualification.'"[10] "Small rooming houses" meant "rentals of a two-family property where the owner resides" and those rental properties where one room is rented out and "the owner or a family member" resides in rest of the unit.[11] According to the ordinance, non-discrimination also included preferential advertising. Furthermore, the ordinance imparted jurisdiction to enforce the provisions of the ordinance on the Lexington-Fayette Urban County Human Rights Commission with its "existing powers and procedures." It did not prescribe any minimum or maximum fines in the event that an entity violated its stipulations.[12]

When news of the ordinance reached the public ear, people, groups, and organizations took sides instantly and prepared their arguments for and against the ordinance. Neighbors pitted themselves against neighbors, co-workers against co-workers, and even churches against churches. The debate played out much like it did in Louisville, only this time, those involved made their cases in a public hearing in addition to the local paper. While many expressed their opinions in the *Lexington Herald-Leader*, the most organized and productive debate played out on the floors of City Hall during two public comment sessions. The Lexington-Fayette Urban County Council scheduled the first and longest session to take place directly before the first reading of the ordinance at the July 1, 1999 council meeting.[13] At this assembly, the Council gave the public three hours time, divided amongst the two competing factions to whom the council also assigned separate seating areas, to voice their thoughts and opinions regarding the ordinance in an in an oscillating fashion. The Council also regulated the amount of time people could speak. If a person spoke on behalf of a group, he or she received five minutes in front of the microphone, whereas if a person spoke on behalf of his or herself, he or she received only two minutes time. Those speaking on behalf of groups made up the predominance of speakers, but a few two-minute speakers did opine to the Council.[14] The other public comment session took place before the second reading and vote on the ordinance on July 8, 1999, and was much shorter in duration than the first. At this meeting, the Urban County Council only gave the competing sides 15 minutes each to reiterate their points to the members before the final vote.[15]

Going into the July 1 meeting, those following the movement of the ordinance had some idea of what arguments and issues to expect during the community testimony in

front of the Urban County Council. Both supporters and opponents made efforts to contact and lobby the Council to vote for their position, although in much smaller numbers when compared to Louisville.[16] In fact, given the nature of the issue and the fact that both sides had extensively organized, the volume of communications received by the close of business on July 29 was quantitatively low, only 369: 182 (primarily phone calls) from opponents; and 187 (primarily postcards) from supporters. The mayor's press secretary acknowledged this same detail. "Given that this is an organized effort on both sides," she said, "I wouldn't call this a flood of calls."[17] This low number does not necessarily characterize the people of Lexington as disinterested, however. While it is true that the Louisville Board of Alderman received considerably more communications than the Lexington-Fayette Urban County Council, Lexington's equivalent legislative body, the former also elected not to hold a public hearing on the matter, meaning that direct communication to the Board provided the only real avenue for community members to directly vocalize their opinions and concerns to the body.[18] This makes it plausible to conclude that the citizens of Lexington opted to opine at the hearing (either by affiliation with a group or individually) or in the local paper, rather than by contacting the Board directly.

Despite the low numbers of communication and the relatively little information released about the measure before its first reading at the public hearing, the Lexington community acquired several important bits of information from the activity surrounding the movement in its first week after the Council's vote to consider the legislation. For instance, the communications sent to the Council and the area newspaper exposed the basic rudiments of each side's argument. As the *Lexington Herald-Leader* reported,

"Opponents say homosexuality and bisexuality amount to lifestyle choices that the government should not endorse; supporters say it's a matter of equal rights everyone is entitled to."[19] These arguments, while oversimplified, supplied the basic premises of opposition and proposition from which the competing factions would build inside City Hall. Of course the sides would offer other premises to support their conclusions, however, almost all of these tied back to these basic principles in some way.

The activities in that first week also made apparent which provisions of the ordinance would emerge as the most contested and debated articles throughout the ordinances entire consideration period. Probably the most contested item in the legislation, at least within the LFUCC, was that which established gender identity as a protected class. By the date of the first reading, one council member had already proposed deleting the provision while several others expressed their support of doing the same. Even Vice Mayor Isabel Yates, who spoke in favor of the ordinance, stated that deleting the provision may secure the ordinance "more positive response by the community," and, for that reason, she "would not be adverse" to deleting the section.[20]

The inclusion of the word "perceived" in both the sexual orientation and gender identity definitions of the ordinance also promised discord in the Council. Bill Farmer, the same councilman who proposed the eradication of gender identify from the bill also proposed the deletion of this word; however, Councilman Richard Moloney spoke out against this action. While those opposed to the inclusion of the language felt it would create an unnecessary burden for employers, supporters thought it a necessary inclusion to protect heterosexuals who could otherwise face discrimination if perceived as gay. Moloney claimed to know people who had faced this very circumstance and thus

supported its inclusion.[21] Other members of the council simply wanted more clarification about the purview of the ordinance and suggested amendments limiting its scope.[22] All of these things played a significant role in and led to the proposition of several amendments which would address each of these perceptual problems with the legislation in turn.

Evoked in the local newspaper and at the public hearing, opponents to the fairness movement in Lexington utilized a handful of different arguments against the ordinance that frequently overlapped and connected to some degree. Many challenges, in fact, often seemed to contain elements of or had roots in another. As realized by many in the community before the actual hearing and as stated in the *Lexington Herald-Leader*, however, the basic tenet of their most-employed argument grounded itself in the premise that homosexuality and its related identities amount entirely to "lifestyle choices" with no genetic or scientific explanation.[23]

Mike Alsmen, a self-described "evangelist" representing "insurance agents and business people from Louisville," championed this argument when he railed about the LGBT "lifestyle" in a five-minute rant that drew little applause at its conclusion and barely, if at all, touched on the concerns of the demographic that he claimed to represent. He called the ordinance "moral insanity" as it condoned "a lifestyle which is not something [LGBTs] were born with." He claimed the ordinance "[promoted] their lifestyle into the public arena," allowing homosexuals to "parade it and flaunt it," actions that meant "they should get fired."[24] In this same regard, Mark Fielder decried the ordinance as a "homosexual lifestyle promoting ordinance."[25]

This argument followed closely to another that opponents used which essentially shared the same premise: the lifestyle line of reasoning and its rejection of a genetic basis for homosexuality. This led to the opponents' conclusion that the fairness ordinance in question would grant the LGBT community 'special rights.' Intrinsic to this assertion was their claim that homosexuality is not an immutable trait, i.e. people are not born gay, and they choose to live in this manner. Furthermore, the belief that LGBTs did not meet the legally specified criteria for afforded protection furnished the other indispensable component for this allegation. Because of this, opponents of the ordinance felt that the government could not accord them any legal protections or recourse beyond what they believed the Constitution and existing laws already provided.

This argument provided the slogan for the stickers that opponents wore at the July 1 hearing which pictured an equal sign and the word "equal," both of which, Jeff Jasper pointed out, stood for "Equal rights, not special rights."[26] Many apparently embraced its motto. One person, for example, asserted that he opposed the ordinance because its drafters crafted it on the "false notion" that the LGBT community met the statutorily established criteria for inclusion in the group of recognized protected classes. He stated that the LGBT community was not economically or politically disadvantaged and that they had "no immutable characteristics." The entire notion of the ordinance, moreover, "would distort the concept of Civil Rights."[27] Kent Ostrander, head of the Family Foundation and an opposition leader, used this reasoning. He accused the "gay political agenda" of trying to "press equal rights into special rights" in an effort to make others "agree with their morality."[28] Following this, Timothy Spalding declared that an ordinance cannot give any "special mention" to any class. Evidently noticing that

existing Civil Rights legislation posed a problem to this statement, Spalding went on to address the Constitution, pointing out that it only protects "race, gender, and creed." This ordinance, he alleged, would created a "third category" based on gender.[29] Another stated that "There is no constitutional right to engage in homosexual behavior," he said. "Under the [current] law, each person already has equal rights."[30]

To further push their point, the opponents gathered support from a Lexington-based organization called Crossover Christian Counseling Services, "a ministry that counsels gays and lesbians to change their sexual preference."[31] At that time, the ministry claimed to have helped "1,765 gays, lesbians, transsexuals and transvestites" since they started 10 years before.[32] Richard Leach, the executive director of the group, labeled the fairness ordinance "a special-rights matter for people that have chosen to live in a respective lifestyle…that can be changed." At least three members from Crossover spoke at the July 1 hearing in front of the Urban County Council. Melissa Fryrear, who then held the program director title at Crossover, claimed to have "been out of the gay lifestyle for seven years." She purported that "Homosexuality and lesbianism can be changed, and healed, and restored."[33] John Lawler, who also tried to make homosexuals look lascivious, claimed to have left "the lifestyle of homosexuality" where he "had over 100 partners." Reiterating that "homosexuals can change," he spoke to the Council about his two children while he stood next to his wife.[34] Finally, Anita Orton, another member, spoke about the moral decay which the "political agenda of the gays" would cause to the community if the ordinance passed.[35]

Despite their insistence that homosexuals could change to live a heterosexual lifestyle, members of Crossover seemed to have trouble with just that. For instance,

Bruce Grimsley, the man who founded the group in 1986 "later returned to homosexuality and left Crossover in 1991." Moreover, as of 1999, thirteen Exodus International ministries, Crossover's national affiliate, failed over the span of 20 years after their directors "returned to homosexuality." Their group also experienced the same plight as Crossover when the "two men who helped start Exodus fell in love and left the ministry in 1978." Some people, like David Cupps, saw their continued homosexual interests after sexual reorientation counseling as proof that their homosexuality was a part of them and could not be changed. Melissa Fryrear, on the other hand, a program director for Crossover in 1999, claimed to have left "the lifestyle" in 1992. Despite this, she too admitted to "struggles with lesbian desires" and "relapses on the way."[36]

Understanding that these relapses and reversals call into question the success rate of sexual reorientation therapy and aware that several opinions existed on the subject, Exodus International announced in 1999 their intention to commission a three to five year study examining the efficacy of the reorientation counseling that their organization and its affiliates administer.[37] The organization hired Stanton L. Jones of Wheaton College and Mark A. Yarhouse of Regent University, two "evangelical Christians committed to the truth-seeking activity of science" to conduct a "longitudinal study of religiously mediated sexual orientation change."[38] Their research explicitly attempted to address two questions: "Is change of…homosexual orientation, possible at all? And is the attempt to change sexual orientation harmful?" The two scholars pledged to Exodus that regardless of what information they discovered, no matter "how encouraging or embarrassing," the results would be publicly reported.[39]

Starting with the hypotheses that "change of sexual orientation is impossible, and second that the attempt to change is harmful," the group gathered an initial sample of 98 subjects, 72 men and 26 women (by the end of the study this number would shrink to 73 participants),[*] seeking treatment from Exodus International which they followed for the duration of "thirty months to four years," during which time they conducted three separate assessments. Jones and Yarhouse report their test group as being "highly educated" and "much more religious than a typical sample of the American public."[40] Ultimately, the two authors derived the conclusion from their examination that "change of homosexual orientation may be possible for some persons," which "may take the form of a reduction in homosexual attraction and behavioral chastity" or "a reduction of homosexual attraction and an increase in heterosexual attraction." Furthermore, they found little to suggest that Exodus-style counseling harmed participants.[41]

In analyzing the authors' numbers, however, their first conclusion at least seems somewhat misleading and really depends on how one defines "change." When one looks at their figures with greater scrutiny, "change" becomes somewhat of a tenuous demarcation. For instance, when analyzing the researchers' entire sample as well as their two "subpopulations," called "Phase 1" and "Truly Gay,"[†] the groups never cross the threshold separating homosexual orientation from heterosexual orientation.[42] Jones and Yarhouse had their sample rank themselves on the Kinsey Scale, an empirical device

[*] The sample slowly eroded from 98 to 85 to 73 over the course of the assessments. The authors report that subjects dropped out for various reasons. Some "decided to accept gay identity," while others withdrew because they "believed themselves healed of all homosexual inclinations" and "continued participation reminded them of the very negative experiences they had had as homosexuals." The authors claim that they lost most subjects for unknown reasons. See Jones and Yarhouse, page 5.

[†] The first group had recently entered Exodus allowing the researchers to follow them from early in the counseling process. Those subjects designated as "truly gay" earned this titled based off of "empirical markers" which the authors constructed.

used to grade sexual orientation on a zero to six continuum, with six delineating an entirely homosexual orientation, zero an entirely heterosexual one, and three denoting a perfectly bisexual individual.[43] While it is true that the average scores of the subjects in all groups moved on the scale from a score closer to six to one closer to zero, none shifted so far as to pass a score of three into the predominately heterosexual range. Actually, all groups hovered somewhere around a score of four. Moreover, the numbers show a regression in the third assessment, called "Time 3,"[‡] from the time of the second assessment in the "Whole Population" and "Phase 1" averages, meaning that, in the later stages of the study, the subjects' average score moved closer to their original one indicating greater homosexuality.[44] The authors do note this movement but state that it "did not attain statistical significance" and therefore assumedly did not consider it in drawing their conclusions.[45]

Jones and Yarhouse also evaluated their sample groups in terms of the Shively-DeCecco sexual orientation model. This measures both homosexual and heterosexual attractions, meaning same-sex and opposite-sex attraction, on a one to five scale, with one being the least and five the greatest level of attraction.[46] In the results that they reported, one sees very similar trends to those evident with the Kinsey Scale numbers. For example, in all three assessments, their results recording homosexual attraction are relatively high on average and never dip below the midpoint, three. Furthermore, at "Time 3," one again sees a regression in the entire sample and in both subpopulations; the sample reports greater homosexual attraction at this period on average than at "Time 2," though again, not quite at the higher levels reported at "Time 1."[47] The opposite is

[‡] The authors refer to assessments one, two, and three respectively as "Time 1," "Time 2," and "Time 3."

recorded with heterosexual attraction. Across the board, the levels reported stay relatively low and never cross the midpoint, again three, which would signal greater heterosexual attraction on average. The same regression is also present. At "Time 2," the sample reports greater heterosexual attraction on average than at "Time 3," though at "Time 3," the levels still remain higher than at "Time 1."[48]

Despite these figures, 38% of the sample reported some form of successful change, while 56% reported that they were either "not satisfied" or had "no significant sexual orientation change." Of these, 8% "embraced gay identity."[49] The successful "changes" fell under two headings: "Success: Conversion" and "Success: Chastity." The former heading, which encompassed 15 of the 38 successful percentage points, signifies "substantial reductions in homosexual attraction and substantial conversion to heterosexual attraction and functioning." The latter heading, comprising the other 23 of the 38 percentage points, represents those in the sample "who reported homosexual attraction to be present only incidentally or in a way that does not seem to bring about distress, allowing them to live happily without overt sexual activity."[50] Even among these two successful groups, however, Jones and Yarhouse tell that these individuals "did not report themselves to be without experience of homosexual arousal, and they did not report heterosexual orientation to be unequivocal and uncomplicated."[51]

So what does "change" mean? It obviously does not connote a complete shift from homosexual to heterosexual orientation. To the authors, Exodus International, and Crossover Ministries, "change" appears to simply mean a reduction in homosexual tendencies. Considering that these individuals all still possess homosexual tendencies and considering that in regards to the Kinsey and Shively-DeCecco scales, on average the

sample still scores more in the homosexual range than in the heterosexual range of the sexual orientation continuums, to call these members of the sample "changed" seems a bit misleading. As the authors define "change" at the beginning of their study, a least, the word does seem to fit their explanation.

Other opponents focused less on the immutability of homosexuality and more on the negative consequences that they believed the legislation would have on the local business community. They feared that the ordinance would place "potential liability exposures" on employers, leaving them subject to lawsuits.[52] Proponents of the ordinance, they cried, "seek to inject" their lifestyle and its characteristics "in the workplace, thus "[imposing on employers] the burden…of protecting them and that activity, behavior, and appearance."[53] Another speaker asserted that when an employer acts to exercise his freedom of choice to disagree with the LGBT lifestyle, "disagreement becomes discrimination." This means that the ordinance places the employer in a place where he or she "then becomes the target of discrimination."[54] In order to prevent undue accusations, they said, employers would have to instate "homosexual quotas" in an effort "to prove nondiscrimination" and disprove frivolous charges, maybe even lawsuits, by disgruntled employees.[55] Others also spoke of LGBT "quotas" which pose "potential disaster to our business."[56]

In many of their arguments, the opponents either explicitly tied their contentions to biblical truth, or religion underscored their statements in some way. Considering the nature of the issue, however, it is not surprising that biblical condemnations comprised a large body of the opponent's arguments against the pending fairness measure. Several ministers spoke of the Bible's passages which deal with homosexuality, and more than

one referenced God's judgment on those who sin against Him, specifically referring to the story of Sodom and Gomorrah. Speaking on this passage, one minister stated that the "the sin that invited that judgment was the sin of homosexuality."[57] Another individual claiming to speak on behalf of "insurance agents and business people from Louisville," spoke much less about business than he did about biblical denunciations of homosexuality. He claimed that even God discriminated, essentially implying that people should have the right to as well. "God discriminated!" he said after stating that he hated no one, a statement that evoked laughter in the crowd. "He discriminated against Sodom and Gomorrah, and if he doesn't bring his wrath down on this country for what we are standing for, then he owes Sodom and Gomorrah an apology!"[58] One woman stated that homosexuality "goes against God's very creation" before she denounced the "[disgusting]…level of tolerance" in the Lexington community towards the sexual orientation. She appealed to a coming judgment and told the people to "Wake up…and not with someone of the same sex."[59] At least one person even employed the cliché "Adam and Eve, not Adam and Steve" argument.[60] Despite these opponents' attempts to block the fairness ordinance on the basis of their ideas of morality, many, such as Ostrander, informed the board that "You can't legislate morality."[61]

The next tactic that some in the opposition forces tried to defeat the ordinance with was one of scare tactics and "slippery slope" circumstances. In many of their speeches, they depicted numerous "parade of horribles" situations in which the morality of Lexington would slip into a deep state of decay. They appealed to a number of things including, among others, the family, children, schools, religion, and disease. Several doctors gave statistics about AIDS and other sexually transmitted infections, citing higher

instances of these within the LGBT population.[62] Others, including one area minister, stood and spoke about making "a defense of the traditional family," the "unit that made this country." If the ordinance passes, he said, it would meet its destruction.[63] Several other individuals shared this same fear, believing that the ordinance would "erode traditional family values."[64] Many spoke and wrote about the need to protect and shelter children from homosexuality, while a number of these made blatant connections between homosexuality and pedophilia. Numerous individuals cited the disregard the proposed fairness ordinance showed for "the safety of [the] children" and their concern with the things their children may see, as well has how to explain the same to them in that instance.[65] Closely tied to this was the oppositions' fear of homosexuality invading schools and imposing their "grade school education agendas."[66]

Aside from what their children may witness, several seemed more concerned with physically protecting their children from the LGBT community because, in their mind's eye, homosexuals and pedophiles were either one and the same or, at the very least, acceptance of the former would lead to acceptance of the latter. One man spoke about a "very informative" pamphlet he had received entitled "Protect Our Children," a piece of literature which gave statistics about homosexual men molesting young boys. This man also claimed to comprise a part of those statistics, and seeing openly gay individuals in the community made him recall "painful memories" of his own molestation by a gay man.[67] Some opponents asserted that acceptance of the fairness ordinance meant acceptance of "the polygamist [and] the pedophile in any job, neighborhood, or classroom."[68] Another man, using what he called a "logical absurdity test," stated that if the ordinance passed, "it would be effortless to extend the definition of sexual orientation

to include other deviant sexual behaviors, such as pedophilia."[69] Several shared these sentiments while others stressed that lowering the age of sexual consent constituted the next step in the "gay agenda."[70]

Finally, the opposition to the fairness legislation complained in a conspicuously suspicious tone about the process in which the ordinance made its way to the Lexington-Fayette Urban County Council. They felt that the process had happened entirely too quickly and in an underhanded manner. To them, it seemed as if the entire movement reeked of a conspiracy. The testimony of Bill Roberts, the Fayette County Republican Party Chairman, to the Urban County Council encapsulated these sentiments. He stated:

> Freedom, fairness, human rights, all of these things are jeopardized by railroading this extremely sensitive issue. Until last week this item was on the docket as a housing ordinance. Carefully timed over the family vacation peak season, just prior to council's summer recess, the most preferential, homosexual privilege bill ever seen is being rushed to approval with little consideration of the impact to our culture and personal liberty.[71]

An editorial Roberts wrote to the *Lexington Herald-Leader* is even more revealing. He opens the piece with words that take issue with the rapidity with which the measure moved through the local government, calling it a "blitzkrieg [movement] with comprehensive coordination and meticulous precision" that the proponents "unleashed" on unsuspecting, vacationing families. He refers to the ordinance as an "attack…cloaked in 'fairness'" by the LGBT community to advance their "national agenda…using more tolerant communities as pawns in a national chess match." Because Lexington is a tolerant community, he says, its citizens are "a strategic target for same sex marriage, grade school education agendas, quota tests for business and other threats to the personal liberties" of

heterosexuals, or "the other 99% of [Lexingtonians]." Roberts even accuses the government of complicity in the conspiracy, indicting the LFUCHRC of handing over "the city treasury to pursue this agenda." Moreover, when the ten commissioners voted to hear the issue, they did so with "most reading statements obviously prepared in advance."[72]

Roberts only makes the point most conspicuously. To be sure, several in the community shared his beliefs, many of which preferred the use of train metaphors to make their point. One person called the ordinance a "freight train" and another spoke of the way the proponents "railroaded" the ordinance through government "in the hope that opposition will have no time to be mounted."[73] Also like Roberts, others against the ordinance did not hesitate to inculpate other organizations in the community, including the LFUCC. Suggesting the media's collusion with what he saw as a lack of reporting, one man then turned to the Council's handling of the issue, which he called "tyrannical" and "arrogant at best."[74] Others also accused the local government of using its tax income to fund the fairness movement because the LFUCHRC had previously sought to hire an LGBT employee.[75]

In speaking in favor of the ordinance, proponents spent a considerable amount of time addressing and refuting the concerns of the opposition. In so doing, they also placed considerable emphasis on the 'special rights' argument. This, however, is not surprising when one considers the amount of stress the opposition gave to the same topic. To address their adversaries position that the fairness ordinance would grant 'special rights,' proponents made use of

antithetical descriptors to portray the rights that the ordinance would bestow in a more favorable light. They called the very same 'special rights' that the opponents of the measure decried "equal," "basic," or "the same" rights that everyone should enjoy. Moreover, like the opponents did with their stickers at the fairness hearings, proponents also used the stickers they wore to address the 'special rights' argument. These read "Fairness, nothing more, nothing less" on top of a rainbow colored background.[76]

The *Lexington Herald-Leader* immediately took objection with the 'special rights' argument in an early editorial that sided with the proposition movement on the side of the fairness amendment. The piece challenged the position's basic premise, stating that the mutability or immutability of one's sexual orientation "is immaterial when discrimination exists." To the Editorial Board, the argument that sexual orientation is a behavioral choice amounted to nothing more than a red herring. The real issue at hand, they contended, is the need to address the presence of discrimination, for any reason, in the community.[77] Dennis Stutsman, the Kentucky Fairness Alliance's representative at the hearing, took a similar stance on the issue. The ordinance does not "create special rights," he said. Instead, it "remed[ies] special discrimination."[78] Pricilla Johnson, the then chairwoman of the LFUCHRC, had similar words to offer. She rejected those who would define the ordinance as a "gay issue" instead of "an issue of fairness."[79]

Several other community members weighed in on the legislation proffering similar positions that echoed the principle of equality. Numerous proponents asserted

that the ordinance would not confer 'special rights' onto a section of the community. On the other hand, they believed that it would only grant equal rights to a disadvantaged minority. One man stated that the gay community did not seek "special rights, just equal rights."[80] Jeff Vessels, the Executive Director of the ACLU of Kentucky, said the same, declaring that the "ordinance provides equal protection, not special rights."[81] Another woman pointed out the privileges which she believed the heterosexual community takes for granted in order to demonstrate why the fairness ordinance would only promote "equal rights." "No married heterosexual man is going to be fired from his job because of who he loves, nor denied housing because he has a wife. If the fairness amendment is a 'special right,' then it is one that heterosexuals have long had at the expense of lesbians and gays."[82] One made the point in far fewer words, offering a simple rhetorical question for listeners at large. "Who decides what is special and what is equal?" he asked.[83]

While some challenged 'special rights' in much the same way, essentially only instituting the word "basic" in place of "equal," others challenged the opponents on more substantial grounds.[84] The *Lexington Herald-Leader* for instance pointed out that the 'special rights' objection does not "hold up" because the "U.S. Supreme Court rejected the 'special rights' argument when it struck down a Colorado constitutional amendment."[85] Jeff Vessels made the same point. He stated that the "U.S. Supreme Court has explained that there is nothing 'special' about laws that protect people based on who they are."[86] The case to which these two opinion pieces referred is *Romer v. Evans*, a lawsuit in which the United States Supreme Court struck down Colorado's Amendment 2 in a 6 to 3 decision.[87] Amendment 2 precluded "any judicial, legislative, or executive action designed to protect persons from discrimination based on their 'homosexual,

lesbian, or bisexual orientation, conduct, practices, or relations.'" Because of this it violated the equal protection clause of the Constitution and was therefore unconstitutional.[88] By this precedent, proponents asserted, the LFUCC could not consider the 'special rights' line of reasoning in passing the legislation because the United States Supreme Court determined three years earlier that these types of measures do not grant 'special rights' to those they seek to protect.

The proposition also gave considerable time to attending to the religious beliefs and contentions of the pertinent opposition. Despite what some may think considering the nature of the issue, the religious stance on the fairness ordinance was hardly one-sided. In fact, many ministers or congregations placed their support behind the amendment, offering a different interpretation to the Bible and promoting different religious dogmas. The local newspaper noted this division early on, reporting differing opinions about the fairness proposal among the local churches. One minister quoted in this article stated that he could not understand "how a person can allow discrimination…and call themselves a Christian. I think it flies in the face of the Gospel." Another quoted minister proclaimed that the issue centered on the "respect and dignity of every person."[89] Their statements only foreshadow the proponents' complex differences in religious interpretations from those on the other side of the aisle, literally in the case of the public hearings.

Some proponents pointed to conflicting passages in the Bible to demonstrate that the book or its contents cannot unilaterally reject an ordinance. One man, for example, point out other declarations made by God. "But didn't God also say, 'Thou shall not judge' and 'Do unto others as you would have them do unto you'?" he asked. Others

challenged the interpretations of some specific passages proffered by the opposition, such as the story of Sodom and Gomorrah. This sin of these two communities, he claimed, "was not homosexuality but a lack of hospitality extended to the stranger in their midst." Suggesting opponents' inhospitality, he states that they "should be careful what they say because the failure to pass this ordinance would make Lexington, indeed, like Sodom and Gomorrah."[90] In advising that both sides should keep religion out of the discourse because it only "cloud[s] the issue," local minister Bill Kincaid sums up what he sees as the basic differences between the competing sides while also revealing his own bias. The opponents employ the "few biblical arguments which seem to condemn homosexuality," while the proponents, on the other hand, adhere to "the dominant Biblical themes of hospitality, closivity [*sic*], and justice."[91]

Others challenged the opponents' religious argument by offering their own convictions, pointing out other systematic oppressions which people justified with the Bible, or by challenging the opponents to put God's love into action. For instance, one man declared that his religious principles were one and the same with the inalienable rights that Thomas Jefferson propagated in the "Declaration of Independence."[92] Another, a Quaker, suggested that, as "children of God," all should receive "basic rights" because all "are of infinite value."[93] This same individual pointed out other oppressive acts that people have sanctioned with the Bible. He referenced the historic institution of slavery and the continued "oppression of women" present "even today."[94] One Lexington writer called on religious "leaders and groups…to put their love into action." The fairness ordinance, he alleged, gave them just the opportunity to do that. If they did not, conversely, he claimed that they proved the real nature of their religious agenda: "to

deny gays and lesbians the same rights and protections that religious people enjoy under the law."[95]

While the 'special rights' and religious arguments were the most attended to of the oppositions' position by proponents, to be sure, others in the latter group did address some of the additional challenges that the former raised. Concerned with the opponents' claims that the ordinance would hurt businesses, one local business owner professed that she only considered one's "job qualifications…If I look at anything else, it's not about the job." She also quoted *Forbes* magazine and other statistics to contradict the oppositions' position. "Eight of the ten best business locations in the United States," she asserted, "offer civil rights protections on the basis of sexual orientation."[96] A student majoring in "business management and finance" at the University of Kentucky also challenged the bad-for-business allegations propelled in the debate. As the business manager for the LBGT youth group UK Lambda, she claimed to work with aspiring gay "architects, journalists, biologists, doctors, lawyers, computer technicians, engineers and so much more." This ordinance, she asserted, would "protect our future leaders." It would "keep [Lexington's] hard-working, talented and intelligent people where they belong: at home."[97]

Proponents also took some time to address the opponents' claims about the lascivious behavior of LGBT peoples and their assertions that the ordinance would go further in its protections of other unintended, and often criminal, groups than planned. One proponent, for example, called these types of denunciations of the ordinance "heartfelt, but off the topic." That said, the writer got to the bulk of his point:

> This ordinance does not condone irresponsible promiscuity, the spread of AIDS or the bedroom gymnastics anyone of any sexuality could, with practice, perform on their partners.
>
> This is not an ordinance that condones – nor should it – the Christian God's dogma against homosexual practices. This ordinance does not condone homosexual or polygamous marriages…
>
> This ordinance is not about bisexual or homosexual behavior. It is about society's behavior toward bisexuals, homosexuals and those who are androgynous enough to swagger with a swish that could confuse people.[98]

Along these same lines, another proponent stated that "Same-sex sexual orientation is not a disorder; it is not a mental illness."[99] Finally, one speaker addressed pedophilia by simply saying, "There are laws against that," and left the subject there.[100]

Several of those in favor of the proposed ordinance attempted to demonstrate what they saw as the repetitive, somewhat recycled nature of the opponents' rationalizations for disfavoring the measure currently in front of Lexington's legislative body for consideration. To do so, they repeatedly alluded to history to reveal the similarities between current justifications for opposing the measure and historical validations of acts that contemporaries now recognize as prejudicial and oppressive. For instance, University of Kentucky associate professor of Women's Studies Pat Cooper pointed out similarities between the debate surrounding the current ordinance and the Fair Employment Practices Ordinance proposed in Philadelphia in 1948 to protect against race and religious discrimination. She said that in both events, if opponents even recognized that the problem that the framers had designed the ordinances to safeguard against was even a problem in the first place, they made such assertions that ratification would: hurt businesses, lead to frivolous lawsuits, be frowned upon in God's eyes, lead to the decline of property values, or hurt the unprepared community. Furthermore, she drew another

connection to the historical opposition against her interracial, though heterosexual, relationship.[101]

Several others made the same connection as this professor. One man claimed that "In the not too distant past, age, race, gender, as well as economic and social status were deemed…as 'special [rights]' and were grounds for denial of equal rights." He further states that, a lot of the time, the church involved itself in these denials.[102] Similarly, the *Lexington Herald-Leader* paralleled the Lexington fight to the struggle to eradicate Alabama's miscegenation laws.[103] In a different editorial, the newspaper connects the denial of rights to African-Americans' struggle for equality. "It was not long ago that some people thought it was wrong for blacks to have an equal right to vote, to hold a job, to live on a particular street or sit in the front of a bus." The publication made similar points about the subjugation of women with unequal pay, stratification of jobs, and unequal promotions.[104] One individual pointed out their perception of the consequences of such oppression. "Recent generations have seen firsthand the horror that results from racism, bigotry and intolerance."[105]

Despite their need to rebut the claims of their anti-ordinance adversaries, proponents for the fairness ordinance did far more than this. One can obviously see why simply rejecting their opponents' arguments would not have moved proponents' fairness goals very far. Mere refutation would probably have caused the public to believe that proponents had no reasons of their own for favoring the ordinance. Stated more simply, had proponents only done this, they would have demonstrated no need for the promulgation of civil rights protections into law to the LFUCC commissioners or the wider community that voted the former into or out of office. Indeed, proponents

attempted to demonstrate to the community both the presence of discrimination in Lexington and the attendant need to address the same, citing studies and polls evidencing discrimination, by telling personal stories, and by showing the commissioners that the community favored the protections guaranteed by the ordinance if passed into law.

The main study that fairness supporters cited was one conducted by the Lexington-Fayette Urban County Human Rights Commission tracking LGBT discrimination complaints in 1993. Over the span of one year, beginning in July of that year, the LFUCHRC recorded 26 complaints that the *Herald-Leader* reported as "probably…covered by the proposed ordinance."[106] The commission also reported that it received calls detailing discrimination since 1993, but "could not do anything about them," meaning that the complaints were not recorded.[107] The LFUCHRC, though, did make an effort to track complaints for 1999 fiscal year which, by the time of the hearings, totaled six.[108] This study was just one proponents used to evidence that discrimination did exist in Lexington. A sociology professor reported another study that he conducted as part of his work at the University of Kentucky. The study documented that, of a sample of 330 gay men and women from Fayette County:

> Thirteen percent…said they were denied social services, legal services, financial services, public accommodations, and educational services. Seven percent…were denied housing. About 43 percent…were denied membership in sporting clubs [or] were harassed at certain events. Almost 21 percent were either denied a job, a promotion, or fired because employers felt that they were inappropriate for that position. Almost 11 percent were denied health services, and three percent were denied child care, child custody, or adoption.[109]

To further evidence discrimination, others told personal stories of discrimination that they experienced either in Lexington or the surrounding county to the commissioners

at the first public hearing on the ordinance. One woman spoke of employment discrimination that she faced as an administrative assistant at a Lexington corporation. She claims to have been an "outstanding employee" that "consistently received excellent evaluations and praise from [her] coworkers and supervisor" until it got out that she self-identified as a lesbian. After that, her working conditions deteriorated so much that she quit, even those this required her to give up her benefits.[110] Two other individuals spoke of housing discrimination that they faced. One man had a great relationship with his landlord until she discovered an issue of *The Advocate*, an LGBT magazine or as he reports her calling it, a "fag mag." After that, she chastised him for his "disgust[ing]…lifestyle" and called him an "abomination" to God. Moreover, she forbid visitation by any of his "fag friends" at the unit.[111] While this type of housing unit received an exception in the ordinance, the story still resonates. Another woman spoke of a gay male couple that she knew who lost a sale when the owner sold to another buyer, stating that she was afraid the two men "had shabby furniture and would not maintain her property."[112] Another woman's 13-year-old son was attacked at school because the student knew that a lesbian couple had parented him. Despite this, the assailant did not receive a suspension.[113]

Other speakers spoke with the purpose of clearing up ambiguity or misconceptions surrounding the gay lifestyle that opponents expressed concern over legitimizing or condoning. One man, for instance, stated that he "just wants to live in peace and quiet." At night after work, he said, "I want to sit down and doze off in front of the T.V. next to someone who loves me and that I love without being told by people that I am going to Hell, or that I'm a horrible person, or that I molest children."[114] To

address the same issue in regards to gender identity, a transgendered lesbian that identified herself only as "Chester," informed the audience about the different terms to explain gender identity. She then addressed her own experience, saying that she does not feel comfortable in women's clothing. "They feel wrong," she contended.

After the proponents believed that they had successfully demonstrated the existence of discrimination in the Lexington area, they turned to pointing out public support for the ordinance by citing a recently conducted poll by a local "marketing and research firm" called the Preston-Osborne group.[115] The reason for this is obvious. By exposing the Urban County Council members to the area's support of the ordinance, they showed the local legislators that they were not going against the community's will, but rather with their wishes. In essence, this implied that voting for the ordinance would comprise a politically astute move. The poll, conducted from June 10 through June 16, 1999, surveyed "400 randomly selected Lexington registered voters." According to its results: just under 80 percent of Lexington residents believed that employment discrimination on the basis of sexual orientation should be illegal; 77 percent believed the same for housing discrimination; and 82 percent believed the same should be true in public accommodations.[116]

Despite the seemingly black and white nature of the survey, the community read a large amount of gray into its results, causing it to arouse contention. Opponents, for example, interpreted its results to mean that "there is not a major problem with discrimination toward gays" in Lexington.[117] By interpreting the poll this way, they backed up their opinion that an anti-discrimination edict was not needed. The opposition group, however, was not the only entity in the community to take issue with the research

poll. Even the pro-fairness local newspaper challenged the survey, denouncing the language of the questions asked. The Editorial Board contended that the interviewers inquired in a too "euphemistic way," omitting the words "gay," "lesbian," and "homosexual," while substituting "sexual orientation" in their place. Moreover, the Board believed that the research group designed the survey's opening question in a way "To help get people's head nodding."[118] Therefore, the newspaper essentially accused the proponents with a damaging charge that they created a biased poll, replete with auspicious language that would slant the numbers in their favor.

Of course the proponents had to answer this incrimination and both Preston-Osborne and the Lexington Fairness Campaign, the group that sponsored the poll, quickly fired back at the *Herald-Leader* with validations for the poll's wording. Fe Myers and Jeff Jones, the co-chairmen of the Lexington Fairness Campaign, replied that the study intentionally referred to "sexual orientation" instead of other substitutes "for a fundamental reason." First, they said, with "sexual orientation," the style of the poll mimicked that of the proposed fairness ordinance. They deliberately used this language in both instances because "The principle at issue is the protection of all people – heterosexual and homosexual." Similarly, they pointed out, existing Civil Rights laws simply used the term "race;" they did not reference a specific race because the statues were intended to protect all of them.[119] A. Phillip Osborne, the president and chief executive officer of Preston-Osborne Research, first echoed and then expounded on the case raised by the co-chairmen. In addition to purposefully using the language of the ordinance, he claimed, "the use of words like 'gay' or 'lesbian' would have been far more inflammatory or misleading than the phrase "sexual orientation" and would have created

an unwanted emotional response. In addition, the research firm equipped their interviewers with a ready definition of sexual orientation in case any respondents asked for clarification. Osborne also rejected the opening question as "leading." Instead, it "was designed to set the stage about a discussion of fairness and human rights." He believed that it achieved this goal and nothing more.[120]

Once the debate finally progressed from the newspapers to the July 1 public hearing and the speaking concluded, the microphone then turned to the LFUCC to both speak about and alter the ordinance as they saw fit. Because the fairness legislation only received its first reading at this meeting, however, the Council could not vote on the issue until at least the next meeting scheduled for the following week. Bill Farmer, the first Council member to speak, immediately attempted to change the ordinance as written, advocating for the removal of the gender identity protections, asserting that the area appeared "most gray" to him.[121] Fred Brown, characteristic of his opposition to the fairness ordinance as a whole, voted no on Farmer's amendment, not because he agreed with the protections for gender identity, but because he disagreed with the entire legislation. To make sure no one misinterpreted his "no" vote as support for gender identity protection, he preceded his vote by saying, "I am going to vote no on all amendments, and I am going to vote no on the ordinance."[122] This amendment ultimately failed with only four in favor.

Brown's refusal to accept any motions to amend the resolution did not mean that he would not make motions himself in order to kill or stall the legislation. Before introducing his first motion, Brown spoke about looking into a referendum for several reasons. First, he said, it would give both the Council and community more time to

digest the ordinance. Moreover, even though he had previously been informed by William Wharton on June 22 that the Council had enacted an anti-discrimination law before the federal government in 1964, Brown continued to assert that, because not expressly stated in the county charter, he did not believe the LFUCC had to power to legislate for anti-discrimination. Moreover, before Brown could even make his motion, the County Attorney informed him that Fayette County could not legally put the issue on the ballot because it did not have an "express statute" by the state legislature allowing the action. Despite this, Brown still made his motion and kept it on the table even after a city attorney reiterated the County Attorney's remarks and informed him that the state Civil Rights statute gave the council the power to legislate. For these reasons, his motion failed by a margin of 13 to 2.[123] Brown had one more motion to make at the end of the comment session. He motioned to table the ordinance until the end of August, a time after an upcoming LFUCC recess. His motion failed by a wide margin.[124]

When the Council reconvened at their next meeting on July 8, the fairness ordinance was scheduled for its second reading and final vote. Although the anticipating community knew that by the end of the night, the Council would determine the fate of the measure, no sense of finality surrounded the cause. The comments at the previous meeting gave no indication of how the vote would turn. In fact, it appeared that it could be an even seven-to-seven split, which would require the mayor to vote.[125] Furthermore, the Council members could still amend the legislation, meaning that no one knew for sure exactly how a final product, if indeed there was a final product at all, would look. Thus, anxious proponents and opponents packed the Lexington Government Center for the second night to argue their case, much more succinctly this time as the LFUCC only gave

each side 15 minutes each, and hear how the Lexington-Fayette Urban County Council would deal with the proposed law.[126]

After a brief recap of their main points by their main organizers, proponents and opponents once more turned the fairness ordinance over to the Council for their comments and consideration. Councilwoman Jennifer Mossotti started off their portion of the public hearing with amendments to address some of the more contentious issues surrounding the debate. First she sought to clarify the definition of gender identity. Instead of the original wording which defined the category as "a person's actual or perceived sex, and includes a person's self-identity, appearance or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth," she proposed that the definition read: "A. Having a gender identity as a result of a sex change surgery or; B. Manifesting, for reasons other than dress, an identity not traditionally associated with one's biological maleness or femaleness."[127] Her motion carried by a 14 to 1 margin with Brown, holding true to his word given the previous week, voting against the amendment. Next Mossotti motioned to add another exemption to the ordinance to clear up concerns surrounding employee dress and restroom facilities. She proposed that "nothing in this section shall be construed to prevent an employer from: A. Enforcing an employee dress policy, which policy may include restricting employees from dress associated with the other gender or; B. Designating appropriate gender-specific restroom or shower facilities." This motion carried by the same margin and with the same vote lineup.[128]

Next, Farmer proposed two amendments of his own, both of which carried. The first deleted the word "perceived" from the definition of sexual orientation and replaced it

with the word "imputed." The definition of the word "imputed," which he explained as meaning "to lay the responsibility or blame or often falsely or unjustly charged," he believed would better suit the goals of the ordinance. Furthermore, the language would then match that of Louisville's fairness law. His colleagues on the Council agreed, and the motion again carried by a vote of 14 to 1.[129] His second motion sought to clarify the ordinance's original religious exemption. He proposed that the Council remove the reference to Kentucky's Civil Rights statute KRS 344.090, which provided the religious exemptions for employers where "religion…is a bona fide occupational qualification."[130] In its place, Farmer proposed the following language: "The provisions of this section shall not apply to a religious institution or to an organization operated for charitable or educational purposes which is operated, supervised, or controlled by a religious corporation, association, or society, except when such an institution or organization receives annual funding from any federal, state, local, or other government body, or agency or any combination thereof, it shall not be entitled to this exemption." This motion carried 12 to 1, with Fred Brown, Al Mitchell, and Sandy Shafer opposed.[131] The three of them would make up the opposition block at the final vote as well.

Another motion passed that would alter Farmer's religious exemption in a way that opponents to the fairness ordinance would favor. After the change, in order to be excluded from Farmer's exemption, a religious institution or organization would have to receive "a majority of its annual funding" through the government. The way the exemption read before, any government funding at all excluded a body from the exemption.[132] The motion was accepted with a vote break down of 11 to 3 with Fred Brown abstaining. Robert Jefferson opposed the measure because it meant that a

religious institution or organization receiving 49.9% of their funding from the government could still discriminate.[133]

After Mitchell proposed a failed motion to table the legislation to study how the new language would affect the ordinance, the Council moved on to voting. Their votes frequently came with a justification of their stance on the measure.[134] Linda Gorton, for instance, claimed that though she wished the proposition had been willing to slow down their cause, she would vote according to her conscience. She supported the ordinance. Isabel Yates also supported the measure "as a public official [charged] to provide protection to all citizens under the law," though she stressed that she did not "condone or promote homosexuality." Robert Jefferson praised the community before offering his support. Gloria Martin, Dick DeCamp, and David Stevens all went on to vote in favor of the ordinance. George Brown also supported the fairness legislation, stating the one could substitute his race into the argument in the place of sexual orientation and gender identity. He too contended to vote his conscience. Willy Fogle and Richard Moloney also backed the measure with the latter telling a story of discrimination because of his hearing problem to explain his stance. "[Discrimination] hurts," Moloney said.[135]

Ironically, evidence suggests that some members of the opposition movement, probably a fringe element, contributed to the passage of the fairness ordinance with threats and phone calls. While this group's numbers were assuredly small, judging by the comments made at the July 8 public hearing, they made a big impact on the Council members in a way that they did not intend. Jennifer Mossotti, for example, mentioned that she had received threats and unannounced visits to her home. Likewise, Robert Jefferson told the public that five individuals had threatened him over the phone for his

stance on the ordinance. Willy Fogle also mentioned that his "family and life [were] threatened in many ways" through disrespectful letters and phone calls. Gloria Martin stated that correspondence which she received "truly opened my eyes and confirmed, unfortunately, why we needed to have this ordinance." George Brown said something similar when he told the listening community members that the opposition lobby made it apparent why Lexington needed such an ordinance.[136]

Just as those favorable to the proposed fairness law on the Council justified their votes, those opposed did the same. Emphasizing his opposition to discrimination, Fred Brown cast a no vote, reiterating all the problems that he saw with the ordinance that he stressed at the former hearing and claiming that the measure "deeply saddened" him. Likewise, Sandra Shafer accentuated her stance against discrimination before voting against the legislation. She offered several reasons for her vote. First she believed that she "[saw] bedrooms being brought into the workplace." She also disagreed with the process by which the fairness ordinance was brought and went through, and she believed it would be legally "difficult to manage and document." Finally, she thought the ordinance would "legislate a lifestyle." Al Mitchell, the last opponent to vote on the ordinance, also offered a number of reasons for his stance. Because of the potential impact on small businesses, he believed that the ordinance needed to include a provision setting "a maximum fine." Furthermore, he criticized the speed with which the ordinance moved through the lawmaking process. Finally, he claimed to believe such a law needed to come from the top down, meaning that he favored larger government action instead of legislating at the local level. Regardless of how sound or illogical their reasons may have been, it mattered not. They were outnumbered on the Council and the legislation passed.

As one can already see, the LFUCC incorporated the fairness ordinance, as amended, into law on July 8, 1999 by a vote of 12 to three to the sound of cheers from the nearly-overflowing room. To recap the law's new style, as adopted, it defined sexual orientation as "an individual's actual or imputed heterosexuality, homosexuality, or bisexuality" and gender identity as "having a gender identity as a result of a sex change surgery, or manifesting, for reasons other than dress, an identity not traditionally associated with one's biological maleness or femaleness."[137] The new language also made it possible for businesses to enforce a company dress code and allocate "gender-specific restroom and shower facilities."[138] The other amendments adopted at the hearing changed which religious organizations and institutions could claim an exemption under the law.[139] These amendments did help garner support on the Council and secure the passage of the fairness legislation. Bill Farmer, for instance, had previously stated he would not support the ordinance, but because of the amendments, he voted in favor of adoption.[140]

Response to the passage of the fairness ordinance was predictable and filled the "Opinions" section of the *Lexington Herald-Leader* nearly two weeks after the LFUCC adopted the measure as law and probably would have continued to do so had the paper not announced it would no longer print letters on the subject.[141] The pro-fairness newspaper looked at the ratification of the new law as a positive step that "exemplifie[d] how Lexington [had] evolve[d] for the better."[142] Proponents unsurprisingly saw the Council's action in a similar light. They praised and thanked the LFUCC for having the courage to protect all of its citizens and continued to dismiss Biblical condemnations.[143] Opponents, on the other hand, censured the LFUCC for flouting the will of the majority;

vamped up the conspiracy language, complaining of a victory for the gay agenda; attacked the new law on moral and religious grounds, while predicting the now inevitable moral decline of the community; and even openly insulted the Council members.[144]

If the Lexington movement for fairness demonstrates anything, it reveals that the length of consideration has no bearing on the complexity or intensity of debate. Although the movement progressed from proposal to passage in only 18 days, the struggle between those proposed and opposed was as furious as ever with each convinced of the truth of their convictions. Both sides poured their hearts into their arguments and each desperately sought to win a victory over the other. Also, the wide margin of victory for the proponents essentially reveals nothing about the nature of the movement. Passage was never assured until the day of the actual vote, and both sides battled accordingly. Neither side conceded defeat before the vote as the discourse continued to play out in the *Lexington Herald-Leader* and at the hearing until the last moment, and even then proponents did not let go of their certain belief that they were in the right. Finally, like Louisville's movement galvanized the LGBT and allied community to go after increased anti-discrimination protections, the two victories combined would influence the other movements which transpired that year in the other Kentucky localities, Henderson and Bowling Green.

CHAPTER 3

CITY OF HENDERSON

In September of 1999, the City of Henderson[*] followed Lexington-Fayette County and became the third and final Kentucky community to write a fairness ordinance into law that year, a decision that followed a raucous and often crass debate and that went against the will of the community majority. The northwestern Kentucky river-town, however, did not benefit from the more senior and more progressive Lexington law before it. In effect, Henderson's law and movement more closely followed the text of the one passed in the City of Louisville earlier that year, excluding protections for 'gender identity' and only offering recourse for discrimination on account of 'sexual orientation.' The terms of the Henderson law, moreover, were actually weaker and more conservative than both of these cities, resulting from the supportive community's hopeless effort to allay the concerns of the unsupportive. As a result, the law proscribed significantly reduced monetary penalties, contained weaker enforcement provisions, and had a smaller purview overall. In addition, unlike both of these cities, Henderson would not keep its anti-discrimination statute in its code books. Only months after the November 2000

[*] The City of Henderson is located in Henderson County. In this paper, unless expressly noted as otherwise, "Henderson" refers exclusively to the city. Similar to Louisville's government structure in 1999, Henderson and Henderson County had separate governing bodies; only the city considered a fairness ordinance.

elections changed the makeup of the City Commission, the city repealed its fairness law. The group's action came as a relief to the indignant community majority and essentially marked the end of local LGBT movements for expanded civil rights in Kentucky for the next two years.

The fairness movement in Henderson, like all other Kentucky movements, progressed much more slowly than the one which transpired in Lexington-Fayette.[*] In fact, proponents actually began to act publically in the beginning of May 1999, more than a month before the Lexington-Fayette Urban County Council took up consideration of an ordinance for the merged city and county. Although the Henderson Fairness Campaign (HFC) had been privately working towards a fairness ordinance for some time, they opted to go public with their efforts that month "in response to [Commissioner Robby] Mills' outspoken opposition to the proposed legislation." At this time, the HFC, a branch of the Louisville Fairness Campaign and therefore of the Kentucky Fairness Alliance (KFA), held a news conference to announce their intention "to lobby individual commission members to discuss the proposal" of fairness legislation.[1]

The group had originally planned to privately meet with the five members of the Henderson City Commission, made up of the mayor and four commissioners, on May 6 to discuss the adoption of a fairness measure, but cancelled the meeting after Commissioner Robby Mills invited a member of the local press to attend. While the Fairness Campaign sought more of a clandestine conference in order to protect the identities of some of the group's members, Mills probably agreed with Commissioner Russell Sights that, "they need[ed] to bring their case to the entire commission at a

[*] For brevity, referred to as "Lexington."

[regularly scheduled] public meeting." At the same time that this happened, Mills and Sights expressed their characteristic opposition to any fairness legislation. Sights stated that he opposed it "for religious, moral and spiritual reasons" in addition to "questions about its enforceability." Likewise, Mills wondered about "defining a homosexual or a lesbian," believing it difficult to "prove that," which he therefore believed made the law "unenforceable."[2] Considering these sentiments, alerting the media probably had something to do with their opposition as it would expose the quiet work of the HFC and immerse it in controversy. On the other hand, Mayor Joan Hoffman and Commissioner Sonny Ward both "indicated a willingness to hear their proposals," and although Commissioner Michele Deep did not immediately comment, she would align herself with the latter voting bloc.[3] The battle lines on the commission had been drawn.

The opposition appears to have orchestrated the next public step made in the local fairness battle, a difference from movements before and after Henderson which, in hindsight, foreshadowed the ultimate fate for Henderson's fairness law. The newly colonized chapter of the American Family Association, called the American Family Association of Henderson (AFAH), which formed "in June in an organized effort to stall the campaign," organized a presentation in front of the Henderson Human Rights Commission (HHRC). The group scheduled 10 of its representatives to speak to the Commission and the attending public for "three to five minutes" each on a panoply of topics that ranged from "religious objections" to "legal, ethical and business concerns," including a speaker described as "a reformed homosexual," probably designed to make the case that homosexuals choose their sexual orientation as a lifestyle.[4] Kevin Stone, a youth pastor at the First Assembly of God church in Henderson, headed the group as its

chairman and undoubtedly represented the views of this group when he claimed to oppose a fairness measure on "moral and theological" grounds.[5] While the AFAH initially hoped for a crowd of 250 opponents, causing the HHRC to move the venue of the original meeting to a bigger space, it actually grew to over 800 and forced city fire officials to turn people away. The group credited "word of mouth and family values" for the larger turnout.[6]

When this opposition group began its verbal protest in front of the Human Rights Commission, the HFC had not yet made public the content of the ordinance, still undrafted, which it intended to propose to the City Commission, leading some to call their "organized opposition [efforts]…somewhat premature."[7] Therefore, instead of speaking to the provisions of an ordinance, most "spoke to the perceived morality of homosexuality, rather than the likely content of an eventual ordinance."[8] At the same time, however, due to the largely religious nature of the group and considering that, by this time, Henderson could look to the framework of the Louisville and Lexington laws, one could plausibly conclude that the existence of a drafted ordinance would not have significantly impacted the group's production. Moreover, the course which the debate would ultimately take supports the same conclusion. In fact, some did speak about "the impact of such a proposal," however, the overall tone of the hearing prompted the local press to describe the atmosphere as "like an old-time tent revival…complete with fiery sermonizing, choruses of amen and row after row of row of the faithful, fanning themselves in the stifling heat." Many even "waived *[sic]* placards with the Ten Commandments and Bible verses" printed on them.[9]

The animated nature and the contents of the message delivered at this meeting, which proponents deemed "an anti-gay rally," indicated the tone which the opposed Henderson community would adopt throughout the fairness movement. Actually, about 30 proponents did attend the HHRC meeting with the intention of rebutting the statements made by members of the AFAH, but it would have been hard to notice their presence. Not only did their speaker, HFC co-chair Katherine Hope Goodman, opt not to deliver her prepared remarks after "other members of the Fairness Campaign implored [her] not to, saying they feared for [her] safety," but the opposition dwarfed them in sheer numbers. Hence, fear of violence aside, the sheer numbers and fervor of the opposition at the meeting illustrated their disproportionate strength, characteristic in the community, in addition to the primary motivation behind their hostility towards the measure: religion. Indeed, in addition to the presentations made by the American Family Association of Henderson, member Tom Hatton spoke afterwards in justification of "the religious community…step[ping] into issues of government" which they regarded as "moral issues." In addition, denying "anti-gay" claims, he stated that the opposition is not "against gay people…Hate the sin, yes, we hate the sin, but the sinner should not take that as personal hatred." The members of the group, he wanted to make clear, only hate "the sin of homosexuality and the legislative acceptance of it." Despite this, at least one LGBT member who attended the hearing anonymously claimed that "the hostility toward gays from most of the audience was personal and almost palpable to me."[10]

Less than a month later, the local newspaper, *The Gleaner*, reported in early August that Mayor Joan Hoffman and Commissioners Michele Deep and Sonny Ward supported the idea of a fairness ordinance for the City of Henderson. Undoubtedly

recalling the tone of the HHRC meeting about three weeks earlier, the Editorial Board (who by far took the most active role in the 1999 fairness debate of any newspaper in the state) immediately called for civility in the debate surrounding the ordinance. The Board, calling the "votes assured," stated that "Insensitive public comment or threat of political retaliation is unlikely to alter the convictions" of the three Commission members. In fact, they believed that "the tone of public outcry against the proposed ordinance" only "strengthened [the commissioners'] conviction of the need" for a fairness ordinance. As a result, the paper stated that the task now at hand entailed a look at the clarification amendments and exemptions added to the newly passed Lexington law in order to assuage the fears of the opposed community. "For all practical purposes," the editorial claimed, "this is now largely a legislative issue that should be resolved through government process."[11]

Robby Mills, one of the two vehemently anti-fairness commissioners, immediately responded to the paper, challenging the Editorial Board's assertion that the ordinance had enough "assured" votes for passage. He first gave *The Gleaner* a political science lesson, telling that "The last time [he] studied government, a vote was assured [only] when the clerk called the roll and each elected official was asked for his or her vote in public." Mills then moved to a justification of sorts for the way he intended to vote on the ordinance if formerly introduced to the City Commission, claiming that he would only weigh public opinion if his conscience did not lead him "to a clear-cut answer...I and many others in the community will continue to stand up for what our moral conscience tells us is wrong for our community," he stated.[12] Mills, however, never faced this dilemma. Although he did, for all intents and purposes, vote the way his

conscience directed, he voted along the lines of the community majority's sense of morality as well.

Almost as if in answer to Mills statement, Hoffman, Deep, and Ward demonstrated that the votes for fairness on the Commission were essentially "assured." This bloc utilized their three vote majority to motion "to begin formal consideration" of a fairness ordinance "based on sexual orientation" at the very next Commission meeting. The movement for fairness, therefore, already demonstrated a shift away from the proposition, as the Fairness Campaign originally proposed that the ordinance include protections for 'gender identity' in addition to 'sexual orientation,' possibly looking to the recently concluded Lexington movement for hope that this could happen. On top of drafting the text of the ordinance, the Commission assigned City Attorney Joe Ternes to write a legal opinion exploring the constitutionality of the ordinance after Sights motioned for this, expressing his discomfort that the Commission had "no authority of law" to take the planned course of action. The need for the opinion pushed back the date for which Commissioner Ward originally motioned to review a written version of the ordinance from August 24 to August 30. Because of this, the commissioners would review both the ordinance and the legal opinion at the August 30 work session, making revisions to the former if necessary.[13] Mills would also go on to request an opinion from the Kentucky Attorney General's Office about the ordinance's constitutionality, though the results of this never reached the record.[14]

Also on August 10, the City Commission scheduled the first and second readings of the fairness ordinance to take place on September 14 and September 28, respectively, at which time the public would have their chance to publically opine on the ordinance.

Although the Commission would not set the complete procedures for these hearings until the August 30 work session, when the commissioners briefly discussed the process for the public to speak, the divide on the legislative body again made itself apparent. Commissioner Ward wanted to allocate a specific and limited amount of time for public opinion, which would then be divided equally amongst the competing factions, believing that to do otherwise would make the hearings "redundant."[15] Commissioners Mills and Sights, on the other hand, believed that everyone who wished to speak on the matter should have an opportunity to do so. Both of their opinions, however, went deeper than basic concepts of democracy and propagated from their hostility towards the ordinance. Ignoring the existence of the AFAH, Mills claimed that "The side for a fairness ordinance is easily organized. People that do not want a fairness ordinance in town don't have an organization. They just want to show up and speak." Sights, meanwhile, seemed to have a more difficult time keeping the anger from his voice. "I will violently object (to limiting debate)," he said.[*] "You want to be fair. I don't think that's fair. [Some commissioners] have made commitments and don't want to hear any debate." He then incorrectly espoused conflicting government systems in accusing the other commissioners of "bordering on communism and socialism."[16]

Just before the upcoming work session, Ternes presented his legal findings and the basic provisions of the draft ordinance to the local media. Concluding that the "the proposed ordinance is constitutional and the City has the legal authority to adopt it," he composed "a working document…based on examination of other ordinances from other places and our own state statue." In fact, he pointed out, "A lot of language comes

[*] Parenthesis – () – symbolize an edit made by source. Brackets – [] – symbolize an edit which I made.

directly from KRS 344," Kentucky's civil rights statute. In its initial form, the ordinance protected against discrimination on the basis of sexual orientation, which is defined as "a person's actual or supposed heterosexuality, homosexuality or bisexuality" and applied only to "employers with eight or more employees in each of 20 or more calendar weeks in the current or preceding year." The ordinance, unlike in Louisville and Lexington, only empowered the Henderson-Henderson County Human Relations Commission (HHCHRC) to "mediate cases of alleged discrimination." The body, Ternes stated, did not possess the power needed to be granted "sole jurisdiction" over such matters, and therefore could only "informally mediate these claims."[17]

The ordinance did, however, grant aggrieved parties access to the court system, as it gave the County Attorney's Office the power to investigate alleged violations of the ordinance if passed into law. If the court found the violator guilty, he or she would face a meager $250 maximum criminal penalty.[18] This appears to be the only potential monetary penalty for violating the ordinance if made law. Although the aggrieved parties could theoretically pursue remuneration in Circuit Court with a civil claim, Ternes "[came] to the conclusion that to represent that an aggrieved party has a right to file a civil lawsuit based on a violation of this ordinance would be misleading." While he acknowledged that one had the right to pursue a claim, he had "serious questions" about whether the fairness ordinance could "create such a civil cause of action that could be pursued in the state courts."[19]

Ternes, though, created this problem by ignoring the HFC proposal to include a provision setting "civil liability including compensatory damages, costs and attorney's fees as well as a penalty of between $1,000 and $10,000" when drafting the ordinance.

The Reverend Ben Guess, co-chair of the Henderson Fairness Campaign, therefore charged Ternes with creating a "weaker penalty…in an effort to appease the opposition." Even Commissioner Mills called the measure "an empty shell ordinance," though he did so to label it a superfluous action intended only to "pacify a very small special interest group" and not to point out its weakness for the sake of encouraging a stronger law.[20] Sights echoed his sentiments. Believing that proponents had not sufficiently demonstrated the need for an ordinance, he stated, "I do not want to see an ordinance of this type enacted whether it's weak or strong…There's nothing to get into. It's not a debate over content of the ordinance. It's a debate over the ordinance itself."[21]

The draft of the ordinance is also notable for what protections it excluded and for what exemptions it contained. Most conspicuously, Ternes opted to stray from the precedent set by Lexington and leave out any guarantee of protections for gender identity discrimination. The City Attorney expressed that he excluded the section because "it was determined to be difficult to define and difficult to legislate in regard to." The ordinance also exempted religious organizations from the housing provisions if they used their property strictly for non-commercial purposes. Similarly, it exempted "religious organizations and their educational or charitable operations" as long as the group did not receive a majority of its funding from any level of government.[22]

For secular proprietors and businesses, landlords could ignore the housing provisions if the rental space was located in an "owner-occupied building with fewer than four units." Furthermore, the ordinance neither prevented employers from uniformly enforcing dress codes; nor did it force them to abide by the employment provisions of the ordinance if hiring for positions with their own home, such as for a home nurse. Finally,

it did not apply to private clubs or include the prohibition on selective advertising contained in the Louisville and Lexington laws because Ternes believed to do so "was getting too close to the possibility of being attacked on the basis of a violation of freedom of speech."[23] Therefore, in advertisements at least, employers and landlords could inform the local LGBT community that they need not apply for a job or housing. Seemingly, however, if an LGBT applicant ignored the advertisement and applied anyway, unless the proprietor claimed an exemption, he or she could not then discriminate.

Apparently, Ternes went to great lengths to include provisions in his draft presumably to put to rest in Henderson most fears that came up in the debates from other Kentucky cities about the fairness legislation. First, as already discussed, the ordinance contained several exemptions that excluded religious organizations; small, owner-occupied dwellings; and small business owners whom a monetary fine or lawsuit could significantly harm. The ordinance also went well above and beyond these exemptions, though, to explicitly declare that it would not have the negative impact, at least in secular terms, on the community which opponents feared. For instance, it overtly stated that it did not prevent employers from making hiring, firing, promotional, or pay decisions if "based on bona fide occupational qualifications" or "performance." In addition, Ternes included stipulations that made clear that the measure did not require "special treatment," domestic partner benefits, or "quotas."[24] Hence, at the very least, the fairness ordinance paid lip-service to the fears of those opposed to the expansion of local civil rights laws to include LGBTs.

The City Attorney appears to have created a relatively sound first draft of the legislation for it changed little on August 30 despite the fact that the meeting lasted more than four hours and "issue was taken with nearly every section" of the ordinance.[25] In fact, when the provisions he released before the work session are compared to those printed in *The Gleaner* on September 12, just two days before the first reading of the fairness ordinance, one sees little change. The commissioners altered the definition of sexual orientation slightly in order to remove any ambiguity so that it read: "a person's actual heterosexuality, homosexuality, or bisexuality; or the supposed heterosexuality, homosexuality, or bisexuality of a person as perceived by another person." Also, Ternes and the Commission added in another exemption for "single housing unit[s]" at the work session, an inclusion which proved quite significant in events that would later surround the ensuing legal battle over the measure once the legislative body signed it into law. Finally, Ternes and the Commission added a severability clause in case a court struck any part of the law down as unconstitutional in a court challenge.[26]

His carefully crafted piece of legislation, however, did nothing to change the opinions of Mills and Sights. The latter continued to decry the ordinance as "inappropriate, broad, vague," and continued to claim that "the majority of the city's citizens" opposed the measure which he believed was a "part of a national gay-rights agenda." Moreover, no clauses addressing the secular issues surrounding the ordinance could have satisfied him because he continued to "oppose [the] ordinance on moral, religious, political and administrative grounds." At the same time, in addition to his religious objections, Mills continued to contend that the measure "would put undue pressure on business owners and landlords." Before the law even passed, he discussed a

constitutional challenge with Pat Robertson's American Center for Law and Justice (ACLJ), the same group which filed the *Hyman* lawsuit in Louisville. Though the Commissioner supported anyone who would serve as a party to the suit, he declined the opportunity.[27]

Although the public could not speak at the August 30 work session, it did not stop more than 400 people from attending the proceedings, many of whom came with signs to express their support or disapproval of the proposed fairness ordinance. The opposition signs read similarly to one bumper sticker that stated in all caps, "IT'S NOT ABOUT FAIRNESS…IT'S ABOUT AN AGENDA!" On the other side of the isle, supportive signs echoed the sentiments of one which read, "Fairness: No More, No less." In order to allow the public to vocalize these sentiments directly to the City Commission, the commissioners reserved the other part of the meeting to craft the procedures for the September 14 and September 28 meetings. The body resolved to follow the will of Mills and Sights and allow "anyone wishing to speak…an opportunity to do so for a maximum of five minutes" with no overall time limit set for both sides. The Commission directed that every person that wished to opine on the ordinance would be asked to sign in and indicate their position. Speakers would then receive a number and await their turn while the debate alternated back and forth at the podium between proponents and opponents. The Commission "encouraged" the community "to leave their signs and posters at home" and to act with "Respect and decorum…at all times during the meeting."[28] Henderson citizens would ignore both of these requests.

The debate which played out for about 12 hours (seven hours on September 14 and five on September 28) in front the City Commission and crowds which totaled more

than 1,000 (about 575 and 400 respectively – about 160 of whom signed up to speak) exhibited anything but "respect" and "decorum," though it seems that most offenders identified with the opposition.[29] Indeed, as *The Gleaner* describes, opponents held "Vote No" signs while "Waves of applause, boos and jeers pervaded the Henderson City Commission's [September 14] hearing." Moreover, during the September 28 meeting, the crowd "interrupted Deep as she" explained her supportive vote, claiming that "every American, whether of majority or minority status, has certain basic rights."[30] Even Commissioner Mills, an ardent opponent on the Commission complimented the proponents for learning "to be polite, and not to call people names, and not to point people out." He then admonished the opposition stating, "we…as Christians have somewhat spoiled our witness in the last couple of months by name calling and pointing fingers."[31] In fact, at times, the meetings even became threatening, such as when one opponent told Hoffman, Deep, and Ward that the community would benefit if someone "tied a big rock around [their] neck[s] and [then] threw them in the Ohio River. God bless you."[32] In Henderson, it quickly became clear that the opposition eclipsed the proposition, and they were infuriated that it did not matter.

The rapidly regressing nature of debate in the city had many, most notably *The Gleaner's* Editorial Board, calling for civility between the two warring factions. Even before the real malice supplanted the ink in the community's pens and the breath in its lungs, the newspaper ran a commentary titled "The debate: Is it too much to ask that it be a civil one?" in mid August. Based off of early observations from the August 10 City Commission meeting, the paper rightly concluded that "it may be too much to hope for."[33] After the September 14 hearing, which brought the first public forum on the issue,

the Board again answered its own question, this time running an article titled "Civility, please: Disagreement no reason for rudeness." The Editorial Board chided the opponents for "The boos and jeers that practically shouted down Mayor Joan Hoffman as she attempted to speak at the opening of the hearing" as "entirely out of order." Further, the article acknowledged the passage of the fairness ordinance as a "foregone conclusion," but instructed opponents that this fact gave them no "right to be rude and disruptive."[34]

Those sending letters to the community noticed the emerging hostility in the discourse, and they too begged for amity in the sectional conflict. Opponent and leader of the AFAH Reverend Kevin Stone, for instance, also wrote after the September 14 hearing, pointing out that "some have crossed the line of civility" and worrying "that we have allowed our emotions to at times get the best of us." Reminiscing about highly publicized instances of violence in the country and fearing the same would occur in Henderson if tempers did not cool, he pleaded with both sides to "at least agree on the value of life…Let's teach our children that we can strongly disagree and boldly love at the same time."[35] Another writer and Henderson native begged the community to find a similar type of common ground. Paraphrasing a "Nobel peace laureate," she declared everyone in Henderson to be "interdependent – our neighbor's future is our own." Emotions, it seemed, would continue to run too hot to deliver the "rational dialogue" for which she implored.[36]

Neither side, however, waited until formally given to the opportunity to address the Commission to voice their opinions at the hearing which prompted most of these commentaries; nor did discourteous discourse confine itself to these hearings. Long

before the first hearing with public testimony on September 14, the community vied to make their side heard by writing letters to the local newspaper and even directly contacting the City Commission office. In fact, in the week of August 9-13 alone, Commissioner Mills reported that the body received 738 calls, 735 of which opposed the ordinance.[37] As the debate continued to thunder on and cause strife in the river community, it became increasingly evident that it would only pass if the supportive bloc on the Commission completely disregarded the will of the majority and voted according to their own sense of right and wrong.

In terms of secular arguments against the fairness ordinance, Henderson opponents echoed those in Louisville and Lexington, and in fact, many of the same leaders from those movements made an appearance to assist the resistance movement in the latest local struggle. Many decried the ordinance by employing the ubiquitous 'special rights' argument. Some believed that advocates sought "special treatment based on their sexual preference," while others pointed out that, in their opinion, LGBTs did not meet the three requirements for "special protection": immutability, economic disadvantage, and political powerlessness.[38] At the same time, many opponents echoed one man who believed that "the Constitution equally protects us all" and that the community should stand against "special laws favoring [LGBTs] over the rest."[39] And if these protections did not stem directly from the Constitution, then "laws by the federal government [already] addressed this problem." Many shared his confusion about why the City Commissioners believed Henderson needed "another redundant law."[40] Finally, along these same lines, opponent after opponent made the case for 'special rights' by

pointing out that science had not proven a genetic cause for homosexuality. Therefore, they maintained, "It is a choice; it is not a birth defect."[41]

Many also continued to stress that, despite its exemptions, conciliatory language, and weak penalties, the law would deleteriously affect local businesses. Commissioner Mills, for instance, steadfastly stood by his conviction that an ordinance would place "undue pressure on business owners and landlords."[42] Even after Mayor Hoffman addressed his concerns by contacting local businesses with anti-discrimination policies for sexual orientation in place to access potential consequences, ultimately finding none, Mills maintained that it would weigh heavily on those businesses that would not otherwise opt to expand their employment discrimination policies. The ordinance, he feared, would force them to compromise their "deeply held beliefs" in order to comply with the legislation.[43] Others feared that between the possibility of litigation and the $250 fine, the potential financial burdens of the ordinance could prove too much for businesses to endure.[44] Part of this fear centered on their contention that one cannot prove definitely whether or not a person truly does self-identify as a homosexual, essentially meaning that anyone could simply claim homosexuality to achieve retribution against an employer or landlord when angered.[45] Other opponents rejected the idea of greater government intrusion into their lives.[46]

Many in the community contended that sexual orientation discrimination did not occur in the city, therefore making a fairness ordinance unneeded in the first place. Commissioner Sights, for example, repeatedly claimed that "There has been no, and I emphasize, no, concrete evidence presented to justify even the thought, let alone the need, for this type of legislation. There's nothing to get into."[47] Another opponent used

the example of Reverend J. Bennett Guess, a self-identified gay man and co-chair of the Henderson Fairness Campaign, to make the case that "there is no discrimination in Henderson among the gay community." According to this writer, Guess "has a good and caring relationship, faithful friends, loving church community and places of employment where he is graciously accepted – the same as myself, a heterosexual." She then concluded with a misapplied derivative of a quote famously connected to the O.J. Simpson murder trial to show that "this ordinance doesn't fit. So the commissioners need to acquit."[48]

Several elements of the debate in Henderson, however, differed from every other community to consider a fairness ordinance that year. First, Henderson became the only Kentucky movement in 1999 where a City Commission truly did ignore the majority voice of its constituents in passing a fairness law, a fact that did not go unnoticed amongst the opposition. Many in the city echoed if not the words then the sentiments of Ron Brown, Sr. when he stated, "It is [the elected officials'] duty to vote the will of the people."[49] Indeed, after claiming that he had never seen "the city of Henderson in such a state of civil unrest," one 72-year-old, "lifelong resident of Henderson County" proclaimed that "The fact that public opinions do not matter is the problem. The public is not being represented…The mayor and her constituents are turning deaf ears toward the vast majority."[50] Such sentiments allowed one opponent who felt like "seemingly unfair practices or laws [were being] thrust upon [him] to strengthen his resolve "to be less tolerant of any suggestions, especially any that try to shape [his] morals."[51]

Many of these opponents referenced holding referendums in the community, even though Kentucky state law does not provide for these in relation to civil rights issues, a

fact that *The Gleaner* explained.[52] If state law did not allow for a direct vote on the fairness ordinance, however, opponents were content with threatening to express their position through the November 2000 election. Brown, Sr., for example, declared that "no one is irreplaceable come election time."[53] Another opponent, after calling some of the Commission members "rotten, stated that "the year 2000" will bring with it "another election." At that time, he continued, "Anybody that votes for this ordinance…[will see that] their political career in Henderson County is over with."[54] Even Commissioner Russell Sights could not refrain from political threats. The citizens of Henderson may not be able to vote directly on the fairness ordinance, he rallied, but "State law provides for another election, and it's on November 7." The statement won him a standing ovation from the crowd at the September 14 hearing.[55]

The second major difference in the Henderson movement deals with the role which religion played in the debate. While it is true that religious opposition played a prominent role in every Kentucky community in 1999, in every other area, this position still remained subservient to the secular opposition that decried the ordinance for its principles and seemingly tangible consequences (even if religious objections underpinned these outwardly secular arguments). Not so in Henderson. As one editorial by *The Gleaner* laments, "Unfortunately, the central issue of the fairness ordinance – providing the same civil rights protections that 'straight' citizens enjoy – spilled over into a long-running and emotional, religion-based debate."[56] In fact, nearly every member of the opposition who opined did so in an effort to, in the words of one man, "take a stand for Christ and against sin because he took a stand for me one time."[57] Or, as another phrased it, "Good men must say something or evil will prevail."[58] Thus, a vast majority of

opponents read passages of the Bible, repeatedly referenced God's position on homosexuality, described Henderson as a community at war with sin, and vehemently condemned 'the lifestyle.'

Some religiously opposed speakers contended to "love everybody" while simultaneously refusing to "support their sins."[59] One such speaker promoted the position of many when he made the statement, "I don't hate homosexuals; I hate the act of homosexuality."[60] Most, however, used scripture and personal religious convictions to literally damn the ordinance, its supporters, and those it was designed to protect. Pastor Gerald Ashby of Country View General Baptist Church, for example, called the fairness ordinance a "heavy moral issue," "unnatural," and asserted that it "goes against nature itself…[E]ven the animals know not to do it."[61] Another described Henderson as fighting a "spiritual war" with "one side for God and the other, maybe unknowingly, for Satan." To provide further evidence that "our enemies are the demonic hosts of Satan himself," he tied the HFC to Planned Parenthood which, in his estimation, "kills over a quarter-of-a-million unborn children every year." Finally, he told that "the commissioners and anybody else in this room who believe in this fairness ordinance or that there is nothing wrong with being a homosexual" that they were "in a league with Satan himself."[62]

Along these same lines, another man would not even allow his wife to attend the public hearings because "the Bible says give no place to the devil. I would rather her sit at home than look at sodomites." He then proved the need for the ordinance when he professed, "so shall I [discriminate] when it violates Him and His holy ways."[63] One man identified the problem as resulting from "proud homosexuals" that have left the confines of "the closet. The worst thing about any sin," he said, "is to boast about it…but

today[,] homosexuals are proud of their sin." The Bible, though, "calls [their lifestyle] an abomination, and they will not inherit the kingdom of God."[64] In the minds' eyes of these opponents, LGBTs are "ungodly" people "living perverted and filthy lives. They despise restraint and accuse those who oppose them of wrongdoing."[65]

The opponents who possessed such strong beliefs frequently referenced an impending and destructive divine judgment to befall the community once the ordinance passed. To make their case, several referenced the historical events, including the Biblical allegory that tells of the two cities, Sodom and Gomorrah. Acknowledging the love of his Creator, Allan Ramsay told that "God also is a God of wrath and judges those who break those moral standards he has sent before us. It was a God of wrath that destroyed Sodom and Gomorrah."[66] Another man alluded to the same fable and even claimed to have pictures of the destroyed cities, which he then showed to the Commissioners as evidence of what God would do to Henderson.[67] If the City Commission turned away from God, one maintained, "The Lawmaker, and the Law Enforcer, Jesus…[would] bring down the judgment of God on Henderson. It will turn our town into a little…Sodom and Gomorrah…God will destroy you!"[68] Likewise, one opponent told that the downfall of the Greek Civilization came because they accepted homosexuality, the same "sin" which proponents were "smacking…in the face of every Christian in Henderson."[69] Randy Davenport even referenced the Columbine High School shootings, still fresh on the nation's mind, as evidence of God's judgment.[70]

Some of these same opponents believed that God had already begun to show his certain disfavor with the community. Before breaking into a spiritual song at the microphone to help fellow opponents get through the current, immoral tyranny which had

overtaken the City Commission, Eugene Gilbert spoke about the drought plaguing the river town. "Yeah, we do need a rain bad," he said. "But what's happening? Don't you have sense enough to see that God's whipping all of us?...God is getting his share because we're not respecting him at all."[71] Similarly, another speaker who failed to identify himself observed, "It ain't rained since you all started talking about this ordinance, has it?" He then commended his own prescience claiming, "I said if you pass this ordinance, God could send the tornadoes, the earthquakes. I forgot the drought." He then proceeded to mock Commissioner Ward and the rest of the commissioners to the laughter of the crowd, dismissing the former's marriage and calling him a homosexual as a derogatory insult before signing off, "Good night, all – queers and all."[72]

Many believed that God's judgment would come because a fairness law would give legitimacy to a lifestyle that He deemed immoral, one with effects which opponents did not hesitate to describe. Those of this position sincerely believed that "homosexuality causes serious human physical and emotional suffering" as well as "serious health and emotional risks," and as a result, they gave every effort to prevent the adoption of a fairness law.[73] Sonny Mills spoke for many when he stated that homosexuality was not only "immoral," but also "unhealthy." As a result, it would bring the destruction of the "traditional family structure."[74] Following this same reasoning, an opponent referenced "top medical journals" to relay "that gay males have a median 100 plus partners per year." Moreover, "20 to 30 percent practice bizarre and dangerous activities" that make "disease, drug addiction, and early death…exceptionally high in the gay population."[75] One opponent even suggested to a family present at the public hearings who had lost a

gay son to AIDS that they should "vote for a law that knocks [the homosexual lifestyle] out…[because] maybe, if he didn't practice that, he wouldn't have died."[76]

Others feared that the fairness ordinance would make homosexuality look acceptable and appealing to the public, and more importantly, to children. One woman, for instance, derided the ordinance on grounds that it would force teachers to portray "the gay lifestyle, as perverted as it is, as a right and acceptable way of life." It would result in the "molestation of the minds of innocent children."[77] One man who claimed to have left homosexuality with the help of "Scripture," contended that "Homosexuality is not a lifestyle; it's a death style – a death style that destroyed the relationship with my wife, with my family, and with my God."[78] At least one opponent thought so little of LGBTs that if one of his children expressed anything but heterosexuality, he would "get a switch and…whip somebody's hind end." These opponents spoke of homosexuality as if it was a contagious disease. In the words of one man, "I don't want to go eat a hamburger that one of them has flipped over and maybe sneezed on."[79] As a result of these beliefs, opponents declared that the "acceptance of [the fairness ordinance] would be cruel and destructive rather than kind and progressive."[80] Such a law would bring "a power of darkness and evil [to] rule over this city."[81]

As he had done in both Louisville and Lexington, Dr. Frank Simon made an appearance in Henderson to discuss the 'lifestyle,' deliver his AIDS statistics, and spread his antigay convictions. In addition to labeling homosexuality "the leading cause of AIDS," Simon pointed out that "States that have passed gay rights law have the highest incidence of AIDS." While his statistics may be correct, he potentially commits a *post hoc ergo propter hoc* fallacy in assuming that the anti-discrimination laws resulted in the

proliferation of an AIDS outbreak. Equally plausible is the contention that LGBTs, already diagnosed with HIV or AIDS, moved to these areas to live a more peaceful lifestyle and benefit from the law's protections that allow them to live free of the fear of discrimination thus causing the local percentages to rise.[82]

Judging by the rest of Simon's remarks, however, he did not care about the validity of his interpretations so long as he could disseminate them to the already hostile crowd. In fact, after he ran through his list of evidence portraying the toxic condition of homosexuality, he then tied the Henderson movement to an offensive, national gay agenda. He first coupled homosexuality and pedophilia, espousing the movement with organizations such as the North American Man/Boy Love Association. Their motto, as he recited it to the crowd, read "Sex before eight or else it's too late." Next, he related that a book publisher that prints books for children to teach them about homosexuality also features literature which instructs "on how to have sex with children." He then told the highly-religious crowd that, in Louisville, the "homosexual movement" produced a play titled "Corpus Christi" in which Jesus had "sex with his disciples." Events such as this transpire, he believed, "when officials think they know more than God." If the ordinance passed, "at a great personal and national peril, we lose our ability to discriminate against right and wrong," Simon concluded.[83]

Kent Ostrander also opined on the Henderson fairness issue, and in so doing, made a larger case for a gay national agenda that included many of the same goals which Simon discussed. He first accused the Kentucky Fairness Alliance and the Henderson Fairness Campaign of working with and receiving money from the Nation Gay and Lesbian Task Force to place the local Kentucky movements which transpired in 1999 into

the context of an agenda. What constituted the 'gay agenda' in Ostrander's eyes? He delivered a lengthy list to the public which charged the HFC of promoting a plan to attain "homosexual sensitivity training [in schools], lowering the age of consent for sexual encounters, establishing same-sex marriage, gay adoption, and decriminalizing public sex." The ordinance, therefore, would not bring fairness to the Henderson community but instead "a kind of tyranny simply clothed in euphemisms."[84]

The national agenda rhetoric further sets the Henderson movement apart from other Kentucky movements. In the other 1999 debates, issues such as a national gay agenda which sought the legalization of pedophilia came from what seemed like fringe elements. In Henderson, however, a considerable amount of people, not just a periphery group, bought into and propagated these incendiary accusations and frequently went so far as to equate LGBT people with child molesters. For example, former police officer David Gentry declared that "homosexuals…prey on minor children." To back his claim, he then told a story about growing up in Illinois where gay men "accosted [him] on three separate occasions." According to Gentry, they first requested to "perform oral sex" on him, and when he refused, "offered [him] money for sex." When he reported the incidents to the police, he alleged, they merely "laughed off the incident" and informed him that "this was common and not to worry." He then related other stories from his law enforcement career, such as when had to deal with LGBTs having sex in public parks, exposing themselves to children, and occasions of hate crime violence. Speaking on the latter, Gentry justified these assaults, claiming that "most attacks on gays by straights occur when gays solicit sex from strangers." He then concluded by urging the

Commission to vote against the ordinance in order to "keep this city a safe place to raise our children now and in the future."[85]

Others, such as Pastor Ashby, followed this same logic and referenced "studies [which] show that homosexuals are at a greater per capita risk to molest than heterosexuals." In addition, he asserted, the gay rights movement claimed "heroes" that "include many child sex advocates." Therefore, because of the LGBT agenda sought to lower the "age [of] consent," they directly posed "a threat to our children."[86] Some opponents suggested that "gay activists" wanted to drop the consent age to as low as "nine-years-of-age" in an effort to "manipulate the minds of the innocent…to accept this perversion."[87] Another speaker opposing the ordinance asked the question, "Will we be forced to accept pedophiles in our schools?" Presumably answering this question in the affirmative, the opponent then called the fairness movement "a battle against the forces of darkness and the light."[88]

The supportive bloc on the Commission's willingness to go against these opponents' religious beliefs led the latter to threaten the former with more than just a lost election; instead, they terrorized the Commissioners with promises of eternal damnation. "[I]f you vote for this ordinance," said opponent Bud Weaver, "I hope that you're thinking about what you are going to say to God when Jesus looks you in the face."[89] After publically repenting to God for voting for Mayor Hoffman in the last election, another opponent followed Weaver in asking the supportive commissioners if they planned to tell God that He made a mistake in his grand design. "Are you going to stand before your God and say, "God, I supported them because you made them the wrong sex? You, God, the Creator of all things, made them the wrong sex." He then continued to

inform the three-member block that "you're going to be held accountable…I pray for your soul…You're voting for sin."[90] "I can tell you one thing," said another. "[I]t's fearful looking at judgment for those who deliberately choose to instigate and promote that which is wrong."[91] Perhaps one woman who did not identify herself made the point most succinctly. "Are you willing to burn in Hell to pass this ordinance?" she asked. Even if these commissioners avoided an eternity in hell, one opponent alleged that they could not evade a commemoration of ridicule in Henderson. "[Y]ou will go down as being the worst [elected officials] in history, and the first time we build an outdoor toilet in the parks, we'll name it after you," he said.[92]

The few proponents that could be found in the community did their best to stand toe-to-toe with opponents, and the evidence suggests that they did so, at least during the initial stages of the fairness ordinance, with much greater civility. Those who chose to argue had an answer for nearly every indictment levied against measure up for consideration in front of the five-member City Commission, including those based on religious conviction. Charge-by-charge, LGBTs and allies responded to even the most debasing accusations, in many instances, fighting both for all-encompassing civil rights protections and their own individual dignity. At other times, with the numbers at least temporarily secure on the Commission, many took comfort in their majority and simply offered words of encouragement to their commissioner advocates under fire for going against the true, predominate will of Hendersonians.

Just as the 'special rights' contentions of the opposition emulated those spoken in other Kentucky localities in 1999, the proposition's response did the same. One proponent, for instance, pointed out that "Time and again, the words 'special rights' have

been used to limit and diminish what is sought by ordinance to correct." Campaigning with the famous "liberty and justice for all" slogan, he then enjoined the ideals of equality and justice, declaring that "fairness is about justice too. Without equality, justice is of little importance and all of a civil society suffers."[93] John Stanley Hoffman, husband of Mayor Joan Hoffman, also challenged the 'special rights' line of reasoning. "[N]othing in this ordinance," he said, "offers special rights to anyone…This ordinance simply causes us to deal with a social problem that has existed for a long time."[94] One supporter even initially stated that she believed the ordinance was unnecessary because of the affluence of her LGBT friends, one of the premises of the special rights argument. When a friend came out to her, however, she realized that LGBTs only wanted "fairness."[95] Commissioner Michele Deep said it best, though, when she asserted in explanation on September 28 just before voting to enact a fairness law: "I contend this issue is not about more opportunity, different opportunity or opportunity above and beyond. To me, it's definitely not about special opportunity. I firmly believe this issue is about equal opportunity."[96]

As seen in several of the opponents comments in this and other sections, disagreement over whether homosexuality is innate or learned supplies an intrinsic component to the 'special rights' argument. As a result, proponents debating this topic found it necessary to debate this principle. Some simply stated their belief that homosexuality came naturally as just another human variation that distinguishes people at birth. Paul Medord, for example, told the immense crowd present on September 14 that "women didn't choose to be women, those of us that are black didn't choose to be black, [and] those of us that are gay didn't choose to be gay."[97] Similarly, Angela Overfields

expanded on this point in an appeal for the community to notice the benefits of diversity. "[W]e all have been born with certain distinct qualities," she said, "and those qualities make us unique. Difference is great." After listing different human characteristics such as race and sex, Overfields proclaimed that "We are all God's children and none should be mistreated because of some inherent trait with which we have been born."[98]

Proving the innate nature of homosexuality proved to be a key part of the propositions refutation of the 'special rights' argument. Some proponents with LGBT family members, for instance, spoke of their children in an attempt to convince opponents about the immutability of this sexual orientation such as one mother told the example given to her by her own gay son. "I know now," she said, "that he was trying to escape a life that he did not choose and a life that he did not know how to handle. This was 1974. He told me once that he knew he was different at 9-years-old."[99] The same mother, Jan Henning, asked the September 28 audience a question that premised itself on the reviling debate made especially conspicuous during the hearings. "And tell me, who is going to choose to be Gay and suffer the wrath that is in this room tonight?" she posed.[100] Joanna Fink looked at her own history to raise a similar interrogatory. "How could a person choose to be Gay?" she inquired. "[M]y soul was tortured. I tried to commit suicide twice by the age of 15…I prayed every night that someone would invent a pill to make me normal." Unlike the Henning's son, this proponent did not always experience unconditional parental love. At age 16, she told the audience, her mother informed her not to tell her that she was gay or "I'll have to disown you." At age 23, she finally came out to her mother who responded, "I know, baby girl. I have known your whole life. I

thought if I told you I would disown you that it would keep you from being gay."[101] It obviously did not.

Defining the ordinance as guaranteeing equal rights instead of as bestowing special rights for any reason did not, however, answer the opponents' accusations that a fairness law would injure local businesses. Proponents, though, also had rebuttals to these potentially damaging allegations. James L. Hartley challenged these claims early on in the debate. Using a *logos* driven argument, he questioned how any "financial burden" placed on employers by a fairness law due to potential lawsuits is "any different [from] the burden they already bear under current law concerning minorities" before rhetorically asking, "Is our morality now dictated by finance?" Maybe, he suggested, some "business owners are concerned about being sued" because "they have reason for being concerned, namely that they may have policies against hiring homosexuals."[102] Ben Guess proposed the same. "Only people who are willfully planning to discriminate should be concerned about [the ordinance]," he said.[103]

Other proponents argued the business point using more of an *ethos* approach. Katherine Hope Goodman, for instance, referred to the anti-discrimination policy put into place by the Fortune 500 company which employed her locally and the majority of other companies in the Fortune category which had the same to back her conclusion that "The bottom line is that fairness is good for business."[104] Mayor Hoffman also looked locally to address Commissioner Mill's business concerns. She "spoke with business owners and managers of companies already prohibiting discrimination to determine if businesses suffer[ed] undue hardships" as a result of their policies. Across the board, she reported, the businesses responded that "there had been no hardship at all."[105]

The City of Henderson government should have provided a very tangible example of this point for the Commissioners, as the institution had "quietly added sexual orientation to the categories of people it does not discriminate against" some time in 1993 through an "administrative regulation" instead of through an ordinance. In fact, in 1997, then-City Director Ken Christopher pointed out that "there has been virtually no reaction, pro or con, to the policy." In the same year, director of the KFA Maria Price similarly stated, "It's years later and nothing bad has happened to Henderson."[106] Mayor Hoffman pointed this out during the September 28 hearing to Commissioner Sights who served as City Manager when the government put the provision in place. He, of course, denied any knowledge of the condition, alleging that "[H]ad I known about it, it would not have been put there."[107] Although, Hoffman's political move made an excellent case to disprove assertions that a fairness law would detrimentally impact all institutions made to abide by the same, her disclosure of the little known policy would inevitably do more harm to the fairness movement than benefit when the issue came up for repeal later in 2001.

Repeal and the reversal it brought, though, still seemed like years away, and in 1999, even with their considerably smaller numbers, proponents still mounted the fairness offensive. The assurance of a law did not mean, however, that opponents could completely disregard the defensive statements made by the opposition and neglect their duties to rebut the same. Indeed, opponents still vociferously promised to repeal the ordinance at first opportunity, and without the ability to see the ordinances future, proponents had to place the ordinance on the most solid foundation they could possibly build. One of the most important and difficult challenges they faced came with trying to prove the existence of discrimination in Henderson, or as the opponents had cast the

issue, demonstrate a need for the ordinance in their city. In essence, they had to exhibit why, in the verbiage of one opponent who refused to acknowledge discrimination in the community, a fairness ordinance was not just an effort to "'keep up with the Joneses,'" or in other words, act as "the bigger cities in Kentucky" had done, simply for the sake of following them.[108]

Before the public hearings held on the fairness ordinance, it appeared as if the most difficult task facing proponents would be showing instances of discrimination to the Commission and opposition. In fact, in late August, *The Gleaner* Editor responded to the opponent quoted in the preceding paragraph with the briefest of notes. In a little more than 50 words, the newspaper reported that "some members of the city commission have privately been told of at least two instances of alleged discrimination due to sexual orientation – one in the area of employment, the other in the area of housing." The troubling part for proponents came in the next sentence. The Editor continued: "In neither case, however, are the alleged victims willing to have their identities revealed in a public setting."[109]

As the public hearings got under way, proponents, albeit only a few, did seem to have stories to share. Two even spoke for themselves. One lesbian named Michelle Bishop, for instance, stood and told the story of how her "family was kicked out of our trailer park" because of the sexual orientation of her and her partner.[110] The other spoke briefly, did not introduce herself other than to self-identify as a lesbian, and failed to elaborate in her story. Keeping her speech short overall, she told the Commission that, "As a lesbian," she had "been discriminated against." As a result, she felt "that there really is a need for this in Henderson."[111] The most detailed evidence about

discrimination in Henderson presented to the commissioners came indirectly through a surrogate source. Lou Mahon told the local legislators about the employment discrimination endured by a local woman previously employed by a Henderson manufacturing plant. Although she never "disclosed" her identity to coworkers, they began to suspect her orientation and started to "ridicule and harass her constantly," calling her names such as "queer" and "dyke." When she reported the harassment to her supervisor, "Instead of rectifying the situation with the coworker, the supervisor saw to it that the employee was fired the next day."[112]

Mahon could potentially have described one of the two incidents which *The Gleaner* referenced in its short response to an opinion letter in its publication. Indeed, the woman spoken of told her tale to the Henderson Fairness Campaign about two months before the September 14 public hearing at which Mahon shared this story.[113] "Unfortunately but understandably," Mahon continued, she did not want to go public about her situation because she is now working at another local plant and does not want to risk repeating a similar situation.[114] Therefore, this testimony possibly illustrates why more may not have had the courage to come forward with their own accounts. In fact, several more reports surfaced, all of which support this conclusion because all either came written in a letter read by another or from neighboring cities.

One story came packaged as both; the discrimination occurred in another city and a proxy addressed the City Commission. The proponent discussed an account of employment discrimination where a friend of his "received a commendation from her employer for the quality of her job performance" before someone "reported she was a lesbian and she was fired from her work." Although the event transpired in another city,

she now worked in Henderson and did not want to reveal "who she is because of what happened in the past due to her sexual identity." She chose a stand-in to speak for her on September 14 out of fear that "this may happen again."[115] The two co-chairs of the HFC provided compelling testimony that brought both this fear and the discrimination back to home. Goodman, for instance, quickly referenced four instances of discrimination in Henderson – "a gay man who had worked for a company for over 10 years…a nurse who was fired within 48 hours…two men who were denied an opportunity to buy a house…a lesbian couple who were forced to move from a mobile home park" – where those aggrieved feared to present their own stories. Goodman declared, "Many of my friends could not stand before you tonight and tell you their stories for fear of the very real possibility that they could lose their homes and their jobs if they did."[116] Goodman, however, worked for a Fortune 500 company with an anti-discrimination policy already in effect that made her a "happier, more productive employee" and could therefore "stand in their place in the hope that they may have a more honest life."[117]

Guess echoed Goodman and told about knowing of similar "stories of pain and alienation." He had heard "firsthand about discrimination in the work place, in housing, and public accommodations" and offered up another consequence of local discrimination for consideration by the attendant community and Commission. Discussing that many had suggested he do the same, Guess talked about how many of Henderson's "most talented" people have left the city fearing sexual orientation discrimination because they stand "only one decision away from losing their job or home." Claiming to know of "30 or 40" people who have left, He proclaimed that "this is exactly what this whole ordinance is about. It's about creating an environment free from discrimination where all

of our children can grow up here and return here if they so choose."[118] Proponent Joe Fox reaffirmed the consequence elucidated by Guess when he mentioned an "incredibly talented young lady [who] has left our fine city in order to find a place where she would not be hated because of who she might love." In a moving testimonial, Fox then asked the September 14 crowd, "[H]ow many of our wonderful young people do we have to lose before we learn that it's not who you love that is important, it is the fact that you do love?"[119]

On this point, though, the obstinacy of at least one member of the opposition became more conspicuous. Surely, however, many shared the convictions of Keith Hurt when he announced during the second public hearing on September 28 that, despite the testimony concerning discrimination from opponents – the bulk of which speakers delivered on September 14, he continued to express doubt "that there has been discrimination against anyone because of his or her sexual orientation." Decrying the use of surrogates and discrediting their proclamations, Hurt completely disregarded the statements in which victims expressed their fear to speak for themselves when he asked, "If discrimination does exist, why aren't the people involved coming forward to speak for themselves?" He then went on to answer his own question, declaring that "If no one is coming forward to say they have experienced discrimination, I have trouble believing that it exists."[120]

In making these statements, Hurt also ignored other testimonials made personally by victims of discrimination which, though they did not establish discrimination directly in Henderson, they placed it in close enough proximity in order to make it easy to conclude that the same could plausibly occur in his resident city. Barbara Fairchild from

Evansville, Indiana, the city located directly across the Ohio River from Henderson, explained that her employer "fired [her] from [her] job for being homosexual." She then expressed hope that the City of Evansville would follow the positive example set by her neighbor across the water.[121] A man who came to the microphone on September 14 with Fairchild but did not identify himself told his own story of workplace discrimination. "Believe me," he concluded, "it was not funny being fired for what you are. It was horrible; it was humiliating. People should not be done that way."[122] Joanna Fink similarly shared that in Owensboro, her supervisor asked that she "conceal [her] sexual orientation so as to be judged for [her] merit and talent and not [her] label."[123] Thus, while she had not technically experienced discrimination which the fairness ordinance would have covered, her superior informed her to lie about her identity in order to avoid such prejudice.

Even while opponents such as Kevin Hurt contended that Henderson lacked incidents of discrimination, some advocates of the ordinance suggested that their very actions provided evidence enough. *The Gleaner's* Editorial Board fell in this category, while identifying its existence as paradoxical. "Ironically," the newspaper stated, "the debate over a proposed city fairness ordinance…has unearthed an anti-gay fervor that bolsters the argument of those who say an anti-discrimination ordinance is justifiable here." The debate no longer focuses on "the content of the proposed ordinance," the Board contended, but instead on "all sorts of fear-driven scenarios."[124] James Hartley also laid this charge directly at the feet of Commissioners Mills and Sights when he thanked them "as well as the opposition for demonstrating better than [he] ever could exactly why we need the ordinance they so oppose."[125]

Hartley and *The Gleaner* could have just as easily directed their accusations at the Henderson majority for the opposition dominated in terms of numbers. Indeed, Hartley did make this connection when he assigned the majority with the "responsibility to look out for the rights of minorities as though they were [the majority's] own rights." As he pointed out, however, "history has shown us…that we, the majority, can't be trusted with the rights of the minority."[126] Sue Ellen Payne expressed similar convictions. "It seems some of our citizens would have us believe that rights only belong to those who they deem suitable…How can you have a democracy when a few citizens are denied their basic and equal rights?"[127] Likewise, Goodman analyzed the concept of democracy, concluding that the term does not "mean the majority rules nor that we succumb to mob rule. Rather, we are a government of the people, by the people, for the people. This means *all* the people."[128]

An unidentified supporter speaking at the September 28 hearing made comments that dovetailed with those made by Goodman. Wanting to demonstrate that "civil liberties law is different from other kinds of law," this supporter appealed to the history of the United States government which he relayed to the attendants. "Our Founders and writers of our Constitution, the writers of the Bill of Rights," he recalled from some remembered history lesson, "were as concerned about the rights of the minority as they were about the rights of the majority." As a result, they avoided a "direct democratic form of government" in favor of a "representative form of government." Overall, the Founders "were afraid of mob rule – of mob rule by the majority overrunning the minority." Therefore, the speaker taught those willing to listen, "the Bill of Rights was *[sic]* written with the express intention of protecting minorities."[129]

Others appealed to history in the more conventional way in which supporters from other localities referred to the past: to show the repetition and reiteration in discriminatory thought over time or, in other words, to show that some things do not change over time. For instance, Darrell Sheffer referenced moments of mass social change in the United States such as the Civil Rights movement, the feminist movement, and the JFK election to premise his argument. "I did not understand in my early 20s and 30s, why so many people were so violently opposed to these groups wanting their equal rights," he said. Now I do not understand, in my 50s, why so many people are so violently opposed to gays wanting their equal rights." Sheffer demonstrated that history offers another lesson as well. "The Catholics did not take over this country, the African-Americans did not destroy our society, and the women did not destroy our country."[130] In his eyes, LGBTs would fit logically and effortlessly into the progression. Steve Sullivan related the debate back to the 1960s when he wondered "what the opponents would have said in 1964 about the Federal Civil Rights Act." Presumably, he believed that they would have resisted its implications just as they resisted the Kentucky fairness movements in 1999. In fact, he continued on to point out that history paints a constant picture of massive resistance. "From a historical perspective…there has been impassioned resistance from conservative Christians to most major social and legal advances involving greater inclusion of Americans.[131]

As one can tell, Sullivan's statements here delve into another realm of the dialogue surrounding the proposed fairness ordinance, touching on the religiously charged discourse which predominated in the debate. Sullivan not only disregards religious arguments as "hysterical nonsense," pointing out that the legislation would not

subvert the religious' values, he essentially dismissed all faith-based claims as red herrings. "As long as [LGBTs are] not harming others, infringing on others rights, or failing to do their share to uphold our system of government, whatever sins they may commit in the process are between them and God," he proclaimed.[132] Many, such as Sue Ellen Payne, would agree with Sullivan and would separate divine law from civil law. Payne stated that the most important part of her statements given on September 14 centered on the fact that the fairness ordinance "isn't about Christianity." Instead, she told the crowd, "It's about rights, equal rights, given to all of us as American citizens. It's certainly about being just and fair with those rights."[133] One Marine Corp veteran from the Vietnam War named Paul Winkler identified the constitutional separation of Church and State as one American principle that he "fought for in Vietnam." Placing this separation into a religious context, he informed the crowd that a "Jesuit priest" once taught him to "Render unto Caesar those things that are Caesars and to God what is God's."[134]

The same former Marine also touched on another point which proponents used to refute biblical condemnations of the fairness ordinance and, therefore, LGBT citizens. He turned from his separation of divine and civil law rhetoric to call attention to historical injustices committed by the Church which, at the time, people recognized as correctly upholding God's law but that by 1999 society considered atrocious, tacitly suggesting that opponents could be doing the same. Winkler first addressed the Church's adamant opposition to Galileo in 1500s *[sic]* before moving on to tell about how it condemned epileptics and diabetics to violent executions for "convulsions" associated with their medical conditions. All of these things, he affirmed, the Church performed in

the "holy name of Christ." Finally, he rebuffed those who believe that "God writes to us…only in scripture." To the contrary, "He writes to us through the quilt of his creation and all his different variations therein." In short, Winkler claimed, "he writes so beautifully in his acts of creation."[135]

Proponent Paul Medford, a self-described "man of faith" and "seminary graduate," followed Winkler in illuminating Biblical justifications for concepts which, by this time, contemporary society denounced. "I can read my Bible and use it to discriminate against blacks. I can read my Bible and use it to discriminate against women. It says in the Bible that any child who curses their parents should be killed." Medford then concluded the religious section of his testimony with a simple pronouncement. "No one should use the Bible to justify their own ends," he said.

It is unlikely that Medford would have objected to all uses of the Bible in achieving certain ends. Indeed, he most likely would have approved wholeheartedly of those proponents who justified their support for the ordinance in terms of God's love. One could group Ann Sheffer in this collection. Citing a passage from Luke about "those who strive to follow the letter of the law," Jesus spoke to a lawyer and told him to "love God and love your neighbor as yourself." She went on to tell that the lawyer defined the concept of "neighbor" to "radical Jesus," as she consistently called him in intentional irony, as "the one who showed mercy." Concluding her five-minute sermon to the Commission and public, Sheffer offered up a quotation from Thurgood Marshall, the former *Brown v. Board* attorney and United States Supreme Court Justice. "In recognizing the humanity of our fellow human beings," she recited, "we pay ourselves the highest tribute."[136]

Carrying her point one step further, an unnamed speaker addressing the Commission the same night told that when Jesus issued his decree to "'Love the neighbor as thyself,' he did not put any conditions upon that. In fact, the speaker points out that Jesus himself took "the side of the down trodden, of the poor, of the unpopular. He talked and dealt with tax collectors, with prostitutes, with other people who were looked down upon by the Jewish establishment." In conclusion, he offered the crowd some food for thought: "It seems to me, if there are groups of people in our society suffering discrimination, we are not loving our neighbor."[137] The mayor's husband, John Hoffman, recited scripture on this same topic. Jesus pronounced that "All other commandments and the demands of the prophets are based on [loving God and loving one's neighbor]." Moreover, Mr. Hoffman opined on the opposition's conduct, "It's inconceivable to me how anyone could consider it an act of love to deny anyone a job, a place to call home, and access to places of public accommodations." The community would be better, he believed, if the Ten Commandments were "in our hearts and minds rather than in our yards" on signs.[138] All of these proponents contended, such as one father of an LGBT, that "all five" of his children, even his homosexual child, are "God's children."[139]

Others chose to defend the 'lifestyle' which many religious opponents vehemently decried. Jim Guess, the father of the Reverend Ben Guess, was one of these, as he stood and defended his son's sexuality to a crowd of hundreds on September 14. "The truth is," he said, "Gay people want to live an open and honest life in this community without fear of being deprived of benefits we take for granted…The truth is, being gay is not a lifestyle; it's a life. We only have one, and we have to make the best of it." To perhaps

try and make opponents understand this concept, Guess asked the crowd, "How would heterosexuals feel to have to pretend they're gay?"[140] Jan Henning, also a parent of a gay son, correspondingly described gays as "ordinary people who work, live, [and] pay taxes just like any other American.[141] Likewise, one proponent asserted that her graduate research project "overwhelmingly documented that gays and lesbians are neither abnormal nor deviant."[142]

Many chose to challenge the claims that espoused homosexuals with pedophiles or other sexual deviants. In a direct response to a publication of the Lexington-based Family Foundation that made these suggestions, the Henderson Fairness Campaign countered, calling such assertions "inflammatory, insidious, mean-spirited out-right lies."[143] Moreover, the group accused Ostrander and his organization of "only trying to use wicked stereotypes to further his own anti-gay work." The Family Foundation, Guess opined, published "outrageous anti-gay statement[s]" that LGBTs interpret "as personal assaults against our loved ones and our own lives."[144] Indeed, several proponents stood up to these charges to discredit the relation. Medford, for example, worked in the Henderson community as a licensed "Clinical Social Worker." Speaking both from this employment and his own sexual orientation, he declared that "Homosexuals and pedophiles are miles apart."[145] Two even stood on September 14 to relate their own sex abuse stories to the crowd; both echoed the words of Joe Fox who claimed that his abuser (his father) "was then and is now a self-proclaimed straight man."[146] He went on to call pedophilia "really not a point that needs much addressing…[N]o one with any common sense" argues this, he said, and those who do

simply want "to scare those who are uninformed." Besides, he told the crowd, "all statistics show otherwise."[147]

Fox, though, went to great lengths to address pedophilia in the local paper and quoted statistics at length to back the claims he made at the public hearing. He even collected his evidence from a source whose name suggested a religious affiliation: Child Abuse and Religious Education. Reciting passages verbatim, Fox taught that "The majority of child abusers are acquainted with the child and hold an authority position over the child." Mostly male and around the age of 40, he continued, "Many of them are married and have children of their own. Also, many of them hold very conservative views on sex and some even declare themselves strong Christians."[148]

Closely related to this point, many could not believe the hate speech, as they regarded it, which came from the mouths of the opponents and created accusations like that of pedophilia. For example, Jan Henning expressed on September 14, "I am appalled at the anger and the animosity that I have felt in this gymnasium tonight."[149] Henning expressed similar thoughts on September 28 and Clark Fields, speaking the same night, concurred. "I've heard a terrific hatred tonight…a terrific, scary hatred tonight – threats, personal attacks…And to quote the Bible with this type of hatred, to me, is blasphemy."[150] Joanna Fink called the "hatred," which she believed plagued the room at the first hearing, a "terrible disease that kills innocent people every day."[151] Likewise, Sister Mary Pauletta Kane told, "If I want to punish my enemies, what I would do would be to teach them fear and even hatred. And I would teach them to judge everybody with whom they disagreed."[152]

Several proponents forewent all debate, including hatred, lifestyles, and the Bible, and instead, offered the three fairness-sympathetic City Commissioners encouragement as they faced incredible ire for going against the number-dominant will of the Henderson community. At the same time, others tacked on heartening statements at the end of their addresses. Glenda Guess, Ben Guess's mother, told the commissioners, "You are building bridges – building bridges for all people to travel across safely. I give you my most sincere thanks on behalf of myself as a gay mother and all the mothers of gay children who cannot speak for themselves."[153] John Hoffman offered some encouragement to his wife whom had had her character attacked in every conceivable way throughout the movement. "It's been written," he said, "that courage is an opportunity that, sooner or later, is presented to us all. Each of you is presented with that opportunity tonight…There are far worse things than being turned out of office for standing up for individual human rights."[154] Likewise, one man told Mayor Hoffman that he had "never seen the likes of" her courage.[155] At the same time, Lou Mahon, in her second appearance before the City Commission, praised the three commissioners for demonstrating "grace under pressure."[156] Finally, one unnamed supporter uplifted the three by telling them "You know what you're doing is right, and that's all it takes."[157]

As expected, at the end of the September 28 hearing when the Commission gave the Ordinance 33-99 its second reading, Mayor Hoffman and Commissioners Ward and Deep overruled the objections of Commissioners Mills and Sights to adopt the fairness ordinance as city law. Although Commissioner Mills made three motions to amend the ordinance before it passed – one to change Section 10-41 to remove the discrimination protections for those who associate with LGBT peoples; one to allow a cross-claim if a

party cannot prove the discrimination alleged in his or her complaint; and one to exempt deeply religious *individuals*, a provision which could potentially have exempted nearly everyone in the Henderson community – all of the motions failed by the same three to two margin. As a result, the language of the law did not change after the revisions made to it at the August 30 work session. Commissioner Deep perhaps summed up the convictions of the three when she stated, "As a public servant, I am bound to honor the civil rights of the people." Commissioner Sights spoke for Mills as well when he vowed to repeal the law "at the first opportunity."[158] It would be a promise that, in time, they would keep. The city would be the only area in Henderson County to adopt a fairness ordinance. Unlike in Louisville, the county government announced that it would "have not part of a similar ordinance."[159]

Before the reaction against the law entered the public realm in an organized fashion, however, the fairness law would cause a minor change in the City of Henderson's employment policies. In a regular meeting on November 9, 1999, the City Commission introduced Ordinance 43-99, a measure designed to amend "Article 18 and Article 312 of the Employee Manual of the City of Henderson" to comply with the newly passed fairness law.[160] The change made to Article 18 simply added "sexual orientation" to the long list of human characteristics which the city government already professed to not discriminate against. Article 312, on the other hand, established how one would file a grievance with the City if he or she believed to have experienced discrimination on the basis of sexual orientation. The person would first file a written complaint to the City Manager that provided a detailed allegation complete with facts. No sooner than one business week and no later than 45 days after this, the City Manager would host an

informal meeting to achieve a resolution. A decision would then be entered within 15 days. If it was not or if the complainant disagreed with the result, he or she could schedule a hearing with the Board of Commissioners to which the complainant could bring a witness. The Commission would then produce a final, written decision within 15 days of the hearing. The ordinance passed on its second reading on November 23 by a margin of 4-1 with Sights presumably changing his vote to comply with city law. Mills continued to oppose the fairness law and essentially attempted to nullify its provisions with his "Nay" vote.[161]

Only weeks later, the city government came under attack by the first and only lawsuit filed against the city challenging the provisions of the fairness ordinance. That the city did face a legal contest, however, is not surprising considering the token opposition in the community and the fact that televangelist Pat Robertson's American Center for Law and Justice had publically promised to represent any person willing to offer his or her name as a party to litigation challenging the constitutionality of the law *pro bono*. At the first reading of the hearing on September 14, the day after the ACLJ filed the *Hyman* case in Louisville,[*] Frank Manion, the Midwest attorney for the conservative, legal activist group informed the crowd of nearly 600 strong, "I can assure you that our organization will gladly represent pro bono any citizen of Henderson who is adversely effected by this ordinance, and we will pursue such litigation all the way to the U.S. Supreme Court if necessary." Then, in a show of confidence, Manion announced, "It's an invalid ordinance; I can't wait to prove it...[I]t's going to be fun from a legal

[*] See Greater Louisville section for more information on this case.

standpoint. Something tells me we'll be doing another case from the western district of Kentucky, from Henderson." [162]

When the test case finally came less than two months after the ordinance became law, the ACLJ did not, however, file the case in federal court such as Manion's comments suggested and like it had in Greater Louisville, by this time, for both the city and country fairness laws. Instead, on November 23, 1999, Manion filed a lawsuit against the City of Henderson, Mayor Hoffman, the Henderson Human Rights Commission, and HHRC Executive Director Jeff Gregory on behalf of Rick and Connie Hile in the local Circuit Court.[163] Several things could explain the interest group's decision to forego filing in Federal Court. The ACLJ potentially wanted to have the Kentucky cases in two separate venues to avoid consolidation so that, in the event that a Court dismissed one, the other would stay alive. Another potential reason that could explain the discrepancy between Manion's words and actions could be that the ACLJ went jurisdiction shopping and, with all of the blatant opposition in Henderson, came to the conclusion that their clients had a better chance of prevailing in local courts. After all, considering the ratio of opposition to proposition in the river city, the odds of selecting a jury favorable to the Hile's case seemed high.

The Hile's complaint made several allegations against the ordinance, which they contended "chills the rights of plaintiffs and others to act in accordance with their religious beliefs and in exercise of various other constitutional rights" and, as a result, violated the First, Fifth, and Fourteenth Amendments of the United States Constitution in addition to several provisions of the Kentucky Constitution, most of which reiterated the provisions from the former. The Hiles contended that LGBTs "demonstrate a serious

lack of good moral character which renders them undesirable as tenants." Therefore, renting to a gay person would contradict the "traditional family image" of their business and "have an adverse impact on the neighborhoods in which their rental properties are located." Because they sincerely believed that the "Bible is the Word of God and that they are compelled to follow Biblical teachings in all aspects of their lives…includ[ing] commercial activities as landlords…they are compelled to not rent their rental properties to persons who are homosexual or bisexual."[164]

Indeed, the Hiles contended, they believed "that the Bible teaches that homosexuality and bisexuality are sinful, abominations, and offensive to God." Hence, to rent to an LGBT would "assist or facilitate sinful behavior" and violate "their spiritual commitment to and relationship with God." As support, the Complaint referenced "*Leviticus* 18:22-24; 20:13; *Deuteronomy* 13:18-19; 22:5; [and] *Romans* 1:18-32." Both the state and federal constitutional principles which the Complaint referenced dealt with freedom of speech, religion, association, conflict of laws, property rights, equal protection, and clear laws with unambiguous guidelines. All of these, it argued, were violated by the fairness law. The main argument for cause which allowed the Plaintiffs to raise these objections, the Complaint contended, centered on the fact that Rick Hile, a disabled and retired police officer, and his wife relied on their rental income for subsistence. Because this income was relatively meek, they claimed that the $250 fine would break them.[165]

In answer through their counsel, City Attorney Joe Ternes, the Defendants mainly responded by dismissing the claims made in the Complaint for a lack of standing. They argued that it "fail[ed] to make a claim…upon which relief can be granted;" asserted that

the local Court "lack[ed] jurisdiction" over a federal matter;" and alleged that "there [was] no actual case or controversy," meaning that the Plaintiffs had yet to experience adverse effects from the fairness law. As a result, the Answer proclaimed that "The plaintiffs have no standing to bring this action" and that "The plaintiff's case is not ripe for adjudication." For the rest of the pleading, the Defendants only admitted those paragraphs of the Complaint which were not contentious under law and in the case. In the remainder, they claimed to lack "knowledge sufficient to form a belief as to the truth," pointedly denied, or allowed the principles of law which the Complaint raised to "speak for themselves" in rejecting the Plaintiffs' contentions.[166] Had the Court of Appeals already handed down its decision in the *Hyman* case, assuming that the Henderson Circuit Court would have followed precedent, this defense would have sufficed in persuading a judge to dismiss the Hile's claim, as the Answer requested. After all, the three-judge panel in that decision rejected Hyman's case for standing because the law had yet to affect him; nor did they believe it would as a result of the fact that the homosexual community knew how he felt about their sexual orientation.[167]

Like the *Hile* case, however, the *Hyman* action was also in its earliest stages and therefore, the federal case did not weigh as precedent over the local. Consequently, the judge opted not to rule in favor of the Plaintiffs or dismiss their claims. Thus, as the litigation played out, the ACLU also attempted to involve itself in the case at the end of May 2000, as it had in Greater Louisville, intervening on behalf of Glenda and Jim Guess, Lyman Allen, Jr., and Sister M. Pauletta Kane, all of whom claimed an interest in the litigation.[168] The Court, however, rejected their motion because "the request did not meet all the legal requirements for such an intervention."[169] Therefore, Ternes and the

City Attorney's Office continued to handle the case. Considering that Ternes had composed the ordinance and consequently had the most familiarity with the law, he undoubtedly represented the city well.

As the case progressed into the discovery stages, Ternes conducted the questioning of Rick Hile at his August 4, 2000 deposition, an event which ultimately won him and the city the case. As Ternes deposed the Plaintiff, it increasingly became clear that in the ACLJ's haste to bring a test case, they would again represent parties not qualified to challenge the ordinance, just as they did in Greater Louisville. Not long into the examination of the witness, Hile admitted that he had not even read the "full version," a misstep that caused him to overlook the law's exemptions and believe that "if you're a church, you're exempt, and that's it."[170] Things looked worse for Manion, the Hiles, and the ACLJ when Ternes showed Hile a copy of the ordinance and asked him to read Section 10-42, subparagraph B – the subdivision titled "Exceptions; exclusion; no preferential treatment."[171] After studying the section, the record indicates that Hile obviously experienced some confusion, leading him to even request a brief counsel with his attorney.[172] As Ternes helped Manion's client understand the provision that he had just read for the first time, Manion must have felt a pang of dread enter his stomach for he had to have realized he had just lost his case. The City Attorney, on the other hand, must have trembled in excitement and anticipation.

Before proceeding, if the reader will recall, at the August 30 work session, Ternes and the City Commission added an exemption for "single housing units" to the ordinance.[173] In essence, excusing landlords with these types of properties may have, at

least, prolonged the life of the controversial law, for Ternes immediately capitalized on an admission by Hile, and his questioning shifted to a line that would seal the victory:

> Q: Those two houses you have are single-housing units, aren't they, Rick?
> A: Yes. I've already stated that…
> Q: You meant with these two properties that you have that we've talked about, didn't you?
> A: Yes.
> Q: You have no plans to buy multifamily dwellings, do you, Rick?
> A: No.
> Q: You're not in negotiation to do so, are you?
> A: No.
> Q: Do you have the money to buy houses like that with more than one family unit?
> A: Not in my present condition.
> Q: Is it a fair statement that the two houses that you have and we've talked about are the only two houses that you intend to have at least in the foreseeable future?
> A: Yes. Plus mine…
> Q: Yes, sir. But we're talking about the rental houses.[174]

With it established in the record that the Hiles could claim an exemption for both of their properties, Ternes had all but won his case. He had, albeit in a different way, proved one of the initial claims of his December 1999 Answer to the Plaintiffs' Complaint: "The plaintiffs have no standing to bring this action."[175] Manion must have recognized the same for he did not waste the time to depose the witness, his own client. Ternes filed the Motion to Dismiss on August 9, 2000, the very same day that he filed the deposition with the Court; it directly referenced the series of questions above.[176] Two days later, he and Manion jointly filed an Agreed Order dismissing the Hiles' Complaint, and the judge entered it the same day. Manion must have eaten his words spoken at the September 14 public hearing: "It's an invalid ordinance; I can't wait to prove it...[I]t's going to be fun from a legal standpoint."[177] The ordinance remained safe for now, but its doomsday clock quickly ticked its life away.

As election season, the main issue of which was the fairness ordinance, approached and Commissioner Sonny Ward decided not to seek re-election, it appeared that repeal was inevitable.[178] Only time kept the law in the City of Henderson's Code of Ordinances and, though Henderson's LGBT citizens probably wished it could, time would not stop. Indeed, of the seven politicians that ran for a seat on the City Commission, "All but one…pledged during the campaign to repeal it," and that one was an incumbent: Michele Deep.[179] As a result, before even Henderson counted the votes, the result guaranteed an anti-fairness majority on the city's legislative body. The opponents finally had their say on the ordinance with the election, giving them the referendum they requested in 1999, and they spoke loudly and clearly.

Not only did the community return Robby Mills to his seat on the Commission, it did so by giving him a record for "the most votes ever received by a candidate in that race." Mills received 5,776 votes in the election, "a little more than 900" above the previous record. The community continued to speak, though. They re-elected Russell Sights with 5,662 votes, making him a close second to Mills. At the same time, Bob Hall, a former four-term Commissioner whose tenure began in 1975, tallied 4,417 ballots in his favor, placing him in third. Opponents had taken the gold, silver, and bronze in the fairness referendum. As for Michele Deep, she scraped a victory in her election, only winning the fourth chair by 120 votes. This, though, seemed not to bother her. "I don't care if it's fourth place by one vote, just give me that chair," she said. "That's all I want. Give me that chair."[180]

Although she had her chair, she and Mayor Hoffman, who had two more years of her term to serve before she too decided not to seek re-election, would not have their

ordinance for very much longer.[181] In fact, on February 13, 2001, not long after the new Commission was sworn in and began their terms, Mills introduced his intention to repeal the fairness ordinance. Telling that the commission gave "'special rights' to homosexuals in the area of employment, housing and public accommodations," he explained why he wished to rescind the law. "Understanding the public's concern over this ordinance and believing that they have spoken at the ballot box on this issue, and believing that the support for this ordinance is no longer a majority on this commission, I humbly ask that this ordinance be repealed." He then continued to get to the heart of his contention. "I believe this is the moral course of action and this is what the public would have us do."[182] Religious beliefs triumphed in the end.

Having stated his case, Mills put his plan into action, asking City Attorney Joe Ternes to draft a repeal of the same ordinance he crafted nearly two years before and defended in Circuit Court for almost a year of that period.[183] He then ushered in the repeal with twice the rapidity with which the Commission adopted the ordinance, scheduling the first reading in two weeks on February 27, 2001. The second reading would follow on March 13. Mills, however, backtracked further than the 1999 fairness movement took the community forward; he did not only seek a retraction of the anti-discrimination law passed 17 months before. He asked also that the repeal include a removal of nearly a decade of precedent, calling for the alteration, in his words, of "the city's employment application and employee manual…by removing the phrase 'sexual orientation' from [the city government's] non-discrimination clauses." He included this under his "moral course of action."[184]

The commission approved his plan by a vote of three to one. Acknowledging that his action "[was] kind of unfair," Mills moved without the attendance of Michele Deep who "was sick at home," therefore explaining the missing ballot. Deep, who watched the hearing from her home on television, "hurried down to the Henderson Municipal Center," arriving just after adjournment, and defended her 1999 decision: "I believe it was the right thing to do when we did it. I think it's the wrong thing to do to repeal it. I will feel that way forever about this." She then criticized Commissioner Sights for his complicity in changing the city's employment policies put in place during his tenure as City Manager. "The city manager turned city commissioner is now going to vote against his own action?" she asked. Sights continued to maintain that he knew nothing about the change when it happened, explaining why he "didn't object personally at the time."[185]

The City Commission's February 13 decision to repeal the fairness ordinance lacked the same public uproar which surrounded the 1999 movement, and the debate reflected this. The first and second readings of the repeal ordinance demonstrate this well. First, unlike the 1999 readings, the Commission did not call special meetings to discuss the measure but, instead, heard comments during regularly scheduled sessions. The body had the ability to do this, though, because the public's desire to comment diminished remarkably. Indeed, both hearings saw only a combined 22 speakers opine at the microphone; of those, 15 opposed repeal while only seven supported it.[186] If one ever doubted that the opposition dominated the makeup of the 1999 crowds, these hearings would have wiped the doubt away. Compared to the crowd of nearly 600 strong which attended the first reading of Ordinance 33-99 on September 14, 1999, only 50 attended the same for Ordinance 07-2001.[187] In relation to the nearly 400 who attended the

September 28, 1999 second reading, the crowd of a little more than two dozen present at the March 13, 2001 second reading must have looked miniscule. Moreover, the meeting only saw 40 minutes of public comment instead of five hours.[188] Perhaps because the smaller crowd contained fewer opponents, *The Gleaner* described the February 27 hearing as "less harsh."[189] Regardless of their civility, the proposition in Henderson simply never had the strength to make a numeric showing.

Opponents[*] did not have much to say about repeal because the Commission now stood poised to enact their will, and what they did say simply reiterated their points from 1999. Rick Hile, the party to the Henderson litigation, reiterated the point that no need ever existed for ordinance in the first place. "Where is one complaint filed?" he asked. In addition, Hile stressed that the fairness law "went against the voters of Henderson." Therefore, in his opinion, repeal was "wrong being made right."[190] Guy Hardin joined him in this statement, mocking Michele Deep for her re-election. "We almost got you out," he told her in February, "but you made it."[191] In March, he returned to the same topic, though this time he did admit that he had gained some respect for her because "you stood up for what you believed." He lamented, however, that she did not lose her seat in November. "Damn, you fouled our plans up," he told her, "[but] we won the campaign this time around."[192]

As they had in 1999, the opponents that made the effort to opine returned to the Bible and the lifestyle of which they claimed it disapproved. Gary Puryear, for example,

[*] In the repeal section of this chapter, although the sides technically switched (the proposition now opposed repeal and vice versa), I will continue to use the terms 'proponents,' 'opponents,' and any derivatives thereof in the same way which I have for the rest of the Henderson chapter. Therefore, unless otherwise noted in context, 'proponent' refers to one who supported the original ordinance *to pass a fairness law* and 'opponent' refers to one who opposed the same.

proclaimed that "I have never, God knows my heart, held any hate in my heart." This did not stop him, however for opposing "the sin of homosexuality." No, he reaffirmed, "It's not out of hatred that I stand here tonight, but out of love and concern for my soul and for the souls of all of us." After all, majority and minority matter not when "God has always been the majority."[193] Donnell Jackson expressed similar views and wanted to make clear what "the God of heaven, [his] Savior and Lord, the Lord Jesus Christ…says about homosexuality." After quoting passages from Leviticus, Judges, and Romans, he concluded that "these amply describe the Lord's attitude on this subject." He then had some words for "Mayor Hoffman and Commissioner Deep voting to retain the "fairness" ordinance…I would suspect they aren't too well versed in the Word of God, the Bible. And, apparently, are not interested in His attitude toward homosexuality."[194] To some, the ordinance went even further than providing protections for the LGBT 'lifestyle' which, in their eyes, God decried. As one unidentified speaker informed the Commission on February 27, the fairness ordinance, if left in effect, would have opened "a Pandora's box of different types of sexual lifestyles," all of which would someday ask for legal protection.[195]

Showing the religious underpinnings of the repeal effort, Joseph McGarrh attempted to use logic to prove the existence of God and, therefore, absolute morality. "To deny moral absolutes is, in effect, to deny God. That is, if we deny moral absolutes and yet claim to believe in an absolute God, we are contradicting ourselves." A view that suggests a subjective standard of morality use to support the fairness ordinance, creates a slippery slope to "moral relativity." He concluded his opinion piece in the local newspaper with a question for all to consider. "What right would we have to condemn a

person for being harmful to society if we do not accept an absolute standard of morality?"[196] Although he obviously suggested an answer along the lines of 'no right at all,' whether one views this as good or bad is, in fact, subjective.

Believing their livelihood and rights were now again in jeopardy, the proposition comments swapped places with the opposition for the repeal movement in that they dominated the discourse in 2001. They begged the commissioners to reconsider turning back the clock on their civil rights, stressing the LGBT population's need for such an ordinance in Henderson. Proponents also reiterated many of their same points from the 1999 battle for the ordinance, but for them, the fairness movement in Kentucky had merged into a previously unexplored chapter, and their comments developed a new dynamic passion that reflected this. Ultimately, through their disappointment and pain, they created an avenue of hope and ardently promised to never relinquish their will to keep fighting for equality.

Many informed the three commissioners that to repeal the fairness ordinance would endorse discrimination against Henderson's LGBT citizens, allowing it to continue as an acceptable practice. Katherine Hope Goodman's emotions channeled through the microphone and into the Henderson Municipal Center's atmosphere on February 27 as she talked to the Commission and small audience. "Discrimination is a subtle form of hatred," she began. "To repeal this ordinance is to sanction that type of hatred in our community…By repealing this ordinance, you are sending a message to the City of Henderson…telling the citizens it is okay to discriminate…you will not be punished or held accountable." Goodman continued on in her address, railing against the burdens it sought to replace on the shoulders of some of its citizens. She spoke for others, she said,

"people who cannot stand before you tonight and tell you about it themselves because you are placing them at risk again." These people, she proclaimed "will return to living in fear for their job, their home, and their families…[Y]ou are marginalizing and disenfranchising every [LGBT] person who lives in Henderson."[197]

Several in the room that evening and at the subsequent hearing held Goodman's convictions in their own hearts and minds, opting to also criticize the Commission. Reverend Jerry Greenly, Director of the Religious Organizing Projected, shared his related beliefs, claiming to speak on behalf of several hundred interfaith groups from around the state of Kentucky. "If you vote to repeal this ordinance," he said to Mills, Sights, and Hall, "you have in fact telling *[sic]* the Commonwealth of Kentucky, the state, the community of Henderson, the nation and all [LGBT] people that they are fair game in the city of Henderson, for you'll be stripping them of protection under the law."[198] Emotions such as these prompted one supporter to write, "I look forward to the day when every person in this community can live without fear of being discriminated against."[199]

The proponents agreed with Greenly that that fairness ordinance, while still on the books, protected every person. As a result of its repeal, they contended, Henderson heterosexuals, at least theoretically, became subject to the same discrimination as LGBTs. In a satirical, opinion piece written to *The Gleaner* days before the repeal ordinance's second reading that did nothing to hide her anger, Cindy Walker tried her interpretation of the fairness ordinance on the community. "If I understand the fairness issue correctly," she began, "then it occurs to me that after the ordinance is repealed any employer in Henderson county *[sic]* can fire someone because they are homosexual."

She then proceeded on to sardonically explain the "opportune" implications of repeal. "If an employer or manager has an employee they just can't seem to get rid of, they need wait no longer. Fire them for being straight!!" She offered a similar solution for "problems" in public accommodations. "If you're a restaurant worker and you have some patrons that you'd rather not have to deal with then ask them to leave because they're straight!!" She pointed out, however, that Commissioners Mills, Sights, and Hall could still foil these plans if they "would like to put something on paper that states heterosexuals are still protected while it's open season on the gay community."[200]

Wally Painter adopted the premise of Walker's letter but left the satire out of his address in speaking to the City Commission on March 13. Moreover, he dropped the hyperbole and spoke to a more tangible, even local level in hopes that the opposed commissioners could relate. "One of the largest regional employers in this area, including of Henderson residents, is a gay and lesbian owned business," he told the commission. "With the repeal of this type of ordinance," he continued, "this employer would have the right to go to every employee and ask their sexual orientation." Unlike how the predominate community perceived the ordinance, he told the body, "the reverse could happen…[S]he would have the right, with the repeal of this ordinance, to fire every straight person in her business. This would impact numerous Henderson residents."[201] In fact, it had the potential to actually affect the majority, heterosexual population and not just the minority, LGBT residents.

The Gleaner Editorial Board also wrote in detail on the topic of legalizing discrimination on the basis of sexual orientation. "The only logical explanation" for the repeal effort "is that Mr. Mills wants the city to be able to discriminate against applicants

or employees on the basis of their sexual orientation," it wrote in February just after Mills announced the itinerary for repeal. "[W]e will soon have a city government whose employment process and employee manual will grant latitude for discrimination on the basis of sexual orientation while private citizens will enjoy similar 'rights' to discriminate." The Board then concluded sarcastically, "What a proud time for our community."[202] In another piece written by *The Gleaner*, the newspaper told that "As of March 13, the city of Henderson will officially go on record as favoring the right to discriminate." In addition, it pointed out, Mills and his two brethren, "By also eliminating the words 'sexual orientation' from the non-discrimination clause in its employee handbook and from its job application form,…[have] taken an extraordinary step in discrimination."[203]

Proponents of the fairness law also continued to address allegations that discrimination did not exist in the Henderson community, repeating stories from 1999 and introducing new ones in 2001. Though she did not introduce herself at the microphone at the first reading, the nurse of whom Goodman spoke in 1999 came forward and personally told her story to the City Commission. After pulling herself up by her "bootstraps" from a life in the "projects," this woman went from the life of a 19-year-old, "pregnant and homeless" female to a college graduate and nurse. After her initial 90 days of employment at her job, she recalled, "I got my evaluation and they said what a wonderful person I was – a great addition to the faculty there. Two days later, my supervisor found out I'm a lesbian and fired me." Having related her brief account, she closed with a simple statement: "It breaks my heart that you all would even consider repealing this."[204]

Goodman stood to recall the story of discrimination against a lesbian factory employee at Henderson manufacturing plant, told in 1999, and to offer a new addition to the list of discriminatory acts in Henderson for the Commission to consider before taking the final vote to repeal the ordinance. Speaking on behalf of "folks who cannot stand before you tonight," Goodman told the legislative body about a "teacher who must keep his or her orientation a close secret because they fear that if that information becomes public knowledge, they will be forced out of the position."[205] With all of the rhetoric about protecting Henderson's children and schoolhouse LGBT agendas that surfaced in the 1999 debate, one can clearly see why a teacher would fear disclosing his or her identity to the public.

Two other Henderson residents relayed stories of hate, not discrimination, at the public hearings to demonstrate the possibility of prejudicial actions against LGBTs in Henderson. Glenda Guess informed the City Commission of a statement she overheard at one of the 1999 meetings. Referring to gays, the man she eavesdropped on declared, "They should just all be shot."[206] Margaret Swanberg recounted a time when she "personally saw discrimination." A group of men brought a camouflaged truck and parked it in front of the Reverend Ben Guess' church before getting out, also dressed in camouflage, and marching in circles around the truck. On the side of the truck, she recounted, they had painted in large letters the word "Sodomists" *[sic]*. "The only thing they lacked," she said, "was guns."[207]

Proponents further challenged the commissioners' propensity to follow only the majority in making a decision on the fairness ordinance. As *The Gleaner* pointed out, "Strength in numbers can be comforting, but hallmark decisions on civil rights laws in

our country have been made in the face of heavy public opposition."[208] Correspondingly, Goodman asserted that "the Civil Rights Act…was not passed because it was popular." She continued to tell how it would have failed if put to a referendum and that many politicians lost elections after voting for the law. The "brave leaders" that supported the monumental legislation in 1964, however, understood that they "must represent the interest of the minority as well as the majority." She then turned to a quotation from Coretta Scott King on the topic of LGBT rights. "Our struggle is the same struggle," she declared.[209]

And in Henderson, the "struggle" would not have been complete without ubiquitous disagreement over moral and religious rhetoric, which set this debate apart from the others in Kentucky. Steve Sullivan connected the two issues, civil rights and religion, in one simple statement. The ordinance is "not about promoting sin; it's about protecting peoples' civil rights." Besides, he told the Commission, "If God disapproves of this so-called lifestyle…He has the ability to handle that in the afterlife."[210] In effect, proponents wanted to separate the secular from the religious, civil law on Earth from God's law in Heaven. As Jerry Vandenberg's February 27 testimony demonstrates so well, they did not want to inject "religion into matters of state." To do so, he believed, violated the principles upon which the Founding Fathers forged the United States. In addition to understanding that the majority should not dominate the minority with "mob rule," the "Founding Fathers were Theists," he asserted. As a result, "this country was not founded on Jesus Christ;" the Founders only alluded to a "God and/or Creator." This proponent, at least, believed that this "could not be any more ambiguous," and he

interpreted it to mean that the Founding Fathers "did not believe this should be a Christian nation."[211]

Others again turned to atrocities contained in God's Word or done in His name. A letter written by James Hartley provides the best example of this position. Hartley pointed out that "the Bible doesn't say discriminate against gays, it says kill them…[It] also says to kill adulterers, but that a man who rapes a virgin girl just has to pay her father the bride price of fifty shekels of silver, and then marry the victim of his rape." Considering such passages, he contemplated, "one must wonder just how seriously [Mills, Sights, Hall, and other opponents claiming to religiously oppose the fairness ordinance] they take the Word of God." He used this discrepancy between actual scripture and how religious opponents would actually act to conclude that "They aren't basing their decisions on scripture, but on their own personal prejudices and fears."[212]

Hartley had other problems with Biblical opposition that others undoubtedly shared. First, he believed that "Basing our government's decisions solely on the religious views of any person is an affront to the religious freedom of all people." Possibly because of the things written in the Bible or because of the historical incidents of oppression which people have used it to justify, he concluded that "Our decisions should be based in reason not religion." Second, he could not understand how someone could suggest that "Jesus would tell people to deny homosexuals the right to work and live in any community." The Scripture which Hartley professed to have read about Jesus told that "he associated with whores, lepers, beggars – the outcasts of his society."[213]

Possibly the best paradigm of an atrocious, historical crime to which religious opponents could relate came in a letter written by Lynda Peters to *The Gleaner* just

before the Commission finalized its repeal of the fairness ordinance. Her illustration also held implications for the majority versus the minority argument. "As we enter into Lent," Peters contemplated, "I can't help but recall the will of the people when they shouted: Crucify Him! Crucify Him!"[214] More relatable to modern times, though not novel to the fairness debate and probably less striking than Peters' paradigm, were Linda Craig's statements about how some people justify their beliefs about the inferiority of women or "people who are not white" with "religious backup." While certain passages in the text of the Bible may support such convictions, she acknowledged, "most of us learned that there is no reason to question a person's race [or sex] in regard to their worthiness in employment, housing and public accommodation."[215] She suggested here that, in time, the Bible would evolve to embrace all people, LGBTs included.

The Reverend Jerry Greenly most directly turned the religious words of the opponents back upon them, questioning the three Commissioners' "eternal destiny" for their assured vote of repeal. "[Y]our eternal destiny is at serious risk tonight for each of the three of you," he informed the triad. Voting in line with the majority, he told them, would "not be sufficient justification [for their votes] before the throne of judgment. The majority will not be there with you at that time. You'll be there alone." Greenly then enlightened the three on the sorts of things they would have to account for after voting to repeal the ordinance. "[E]very single act of violence and discrimination against any [LGBT] person in this community will be on your head. And you will not be able to wash your hands clean. You will be personally held accountable for those acts," he preached to them.[216]

Understanding that all attempts to persuade the commissioners with everything from evidence of discrimination to Bible passages would ultimately be ignored by the three, many vowed that the fight would not end with repeal, much like opponents did when they definitively knew that the fairness ordinance would move from proposal to law. Goodman delivered an impassioned oration promising that the battle for equality would continue and ultimately succeed. In an eloquent address, she alerted Commissioners Mills, Sights, and Ward:

> The struggle is not over. We have not given up on what our community could be—a place of peace and justice, and we will not surrender that ideal. And we shall not be moved… Tonight this struggle steps beyond these walls into the community and into the streets, and we will take it into our homes and into our neighbor's homes, into living rooms and into kitchen tables, into our churches and into our work places. We will continue a dialog which began two years ago. We knew then that freedom, freedom from fear, bias, bigotry, hatred and discrimination would not end with the city Commission's vote 18 months ago. Neither should anyone think that our determination will be suffocated with tonight's vote. This is not the end. This is the beginning.[217]

Speaking immediately after her, Glenda Guess made very similar statements. "The work of justice is never over," she announced to the room. While the opposition bloc now in control of the City Commission would repeal the ordinance that night, she imparted, "it can be put back on the books, and it will be again someday when our community grows and heals. The next time, it just won't be so hard." Moreover, addressing the body as "a lifelong educator," she told the commissioners that, while they may rescind the fairness law, "education cannot be repealed; you cannot take back what people have learned about the gay people in this community. As a lifelong educator, I know that problems can be solved through education. There's just more educating to be done." Like Goodman, she closed with an equally eloquent statement: "We cannot have

peace without justice. Freedom cannot come without justice, and we who believe in freedom cannot rest. We who believe in freedom cannot rest until it comes. We believe in freedom."[218]

Although he no longer lived in Henderson, the Rev. J. Bennett Guess, like his mother, lamented the loss of the fairness ordinance from his new home in Cleveland, Ohio, and indeed, his writing echoed the rhetoric of Mrs. Guess as well as his former colleague in the HFC, Katherine Hope Goodman. Even though Guess wrote with great sadness, nevertheless, his message conveyed more hope than despair:

> I know that the struggle for civil rights and equal treatment is never over. The day will come when lesbian and gay people will not only be welcomed in Henderson, but also afforded legal guarantees that will help curtail the fear of discrimination and violence that is so real and pervasive in our lives…I know that the children and grandchildren of some of our most vocal opponents will not share their same prejudicial views; in fact, they will be ashamed of them…In time, some who spoke against the ordinance will hope their words have been forgotten [He related this to White Citizens' Councils that met at the Henderson County Courthouse in the 1950s]…Henderson has forever been changed for the better…Barriers have been broken, and friendships formed…This is why this loss is no ultimate defeat…If we had to do it all over again? Yes, for sure, and someday, the people of Henderson will.[219]

After the 40 minutes of debate expired with the list of those wishing to speak on March 13 exhausted and the Commissioners having said their piece, Mayor Hoffman called for the final vote. As expected, the ordinance fell to repeal by a vote of three to two. With it, by a companion ordinance, Commissioners Mills, Sights, and Hall eradicated the words 'sexual orientation' from "the city's employee manual."[220] After 18 months in existence, not a single complaint had been filed, meaning both that the ordinance had not harmed the community and that proponents continued to lack official documentation of Henderson discrimination.[221] Though it probably would not have

stopped repeal, an official complaint may have slowed it or, at the very least, made it more difficult. Regardless, the Commission rescinded the law and turned back the city's own non-discrimination policy by nearly a decade. In the words of Commissioner Russell Sights, Henderson opponents probably regarded March 13 as "A better night."[222]

Given the opportunity to explain their votes both on February 27 and March 13, Robby Mills essentially chose to say nothing regarding his vote. "I stated my opinion 18 months ago," he said just prior to voting to strike down the law.[223] Commissioner Sights, on the other hand, did explain his vote and did so in detail. He appealed heavily to the idea that the ordinance never should have existed. "In my opinion," he said, "the need for such an ordinance was never justified. Nevertheless, three elected officials at that time decided to impose their values on our entire community." The ordinance, which he called an attempt to "legislate morality," he believed "left a negative impression with many people and I believe a black mark on the positive image that we enjoy in so many sectors in our community."[224] After that, he chronicled, came the election where fairness came up "more than any other question raised," and "the community [spoke] on election day."[225] He then assured the Henderson citizens on March 13 that "tonight, their voices are being heard."[226]

Commissioner Bob Hall only spoke briefly about his vote. Having not participated in official capacity in 1999, he referred mostly to the November 2000 election to allege that the community knew his views about the ordinance well and put him in office accordingly. He also declared that "it is an unnecessary ordinance" and that "existing laws…are adequate" to protect everyone. Furthermore, despite testimony to the contrary that very night, Hall proclaimed, "I have seen no discrimination based on sexual

orientation in Henderson." In addition, in all of his years of business he made known, he never discriminated. "I have hired several gays and lesbians, knowingly so." Because he did so, it seems he believed that every other employer in the community did the same, in essence, a converse accident fallacy. He concluded reiterating his disapproval of "discrimination in any form." Moreover, he said, "I don't think I am [supporting discrimination] with this vote."[227]

As the comments made their way first to Commissioner Deep and then to Mayor Hoffman, now in the minority since their 1999 votes of support, the tone of the remarks perceptibly changed timbre. Commissioner Deep steadfastly stood by her decision, at this time less than two-years-old. She sincerely believed that adhering to one's constitution required that person to do so "not only with [their] lips, but with [their] lives." As a result, Deep realized, "only in loving my neighbor can I truly love myself; only in doing good for others can any real good come to me; and the manner in which I judge others is the manner in which I will someday be judged." She then essentially apologized for the repeal of the ordinance, a failure that was not her fault, "to all those people who I know need to have the freedom from pain, worry, and fear that I have…I apologize that we cannot proudly say that you have it."[228] Apologizing again in March, Deep then digressed, knowing that "anything else [she had to] say would fall on deaf ears."[229]

Mayor Hoffman also did not waiver from her support for the fairness ordinance. The 1999 movement, she announced, provided her with the opportunity to "stand up for what [she] believe[d] strongly," and she had "strong beliefs" about the nature of both sexual orientation and the law protecting the same. The law, she contended, was "no less

than an effort to stop discrimination" and "should not be repealed." Moreover, in her opinion, it did not protect "a behavior," "a choice," "a preference," or "a lifestyle." To Mayor Hoffman, the ordinance protected against something "biological" or "biochemical," as she believed "genetics scientists" would soon prove. "[M]y support of the fairness ordinance was in part on this belief," she announced to the realization that she would face heavy criticism. Although, she adamantly held the conviction that Henderson "would be a better community" if the Commission did not vote to repeal the fairness ordinance, she accepted the inevitable and instead hoped for healing, quoting Abraham Lincoln's famous Second Inaugural Address.[230]

On March 13, she continued to stand by the fairness cause and acknowledged instances of discrimination in Henderson, citing the nurse story and telling a tale about a gentleman who called her and explained that he moved to Henderson for the fairness law but had now turned to looking for employment and housing in Louisville and Lexington. Moreover, she took on some of the verbiage of Katherine Hope Goodman, Ben Guess, and Glenda Guess, which seemed to look to the future with the return to the past for LGBTs in Henderson. "[T]he issue of fairness will not disappear" with repeal, she decreed. "[W]e who think that these rights are important should join together and take this issue to the state house…or the halls of Congress." She personally announced that she "would like to add her voice" in both Frankfort and Washington, D.C.[231]

After the Commission took the final vote on the repeal ordinance and Mayor Hoffman, against her own beliefs, signed it into law, *The Gleaner* published an editorial which summarized the feelings of proponents. Adopting an altered 'special rights' argument as its own, the Editorial Board titled their piece "Rights: Now some have more

than others." It opened the text of its commentary with a bold pronouncement: "It's official, Henderson's city government now sanctions discrimination on the basis of sexual orientation in jobs, housing and public accommodations – and in its own employee hiring practices and personnel policies." The newspaper then bemoaned that "the central issue of the fairness ordinance" had become lost in a "long-running and emotional, religion-based debate." The Board sought to correct the record. "This was an issue about *rights*, not *religion*. It was about *government's* role in rights, not the *church's* role. It was an issue about *equal* rights, not *special* rights." Either way, it continued, "Commissioners Robby Mills, Russell Sights and Bob Hall have fulfilled their personal and/or religious convictions about the rights of non-straight citizens, apparently responding in part to voter support." The Board did not necessarily argue with the latter, but offered a few comments instead: "In doing so, they have made it lawful in this city to discriminate against certain citizens of our community. If that is truly the public will, Commissioner Sights is correct about the "black eye" *[sic]* he says this issue has given our community."[232]

The contentious fairness ordinance fell in Henderson to the moral convictions of the predominate community in less than two years. Opposed to the legislation from the very start, the majority finally rectified a grievance that flew in the face of their every belief; nothing proponents could have done would have saved the city ordinance against the overwhelming strength of the opposition. To this day, Henderson remains without a fairness law.

CHAPTER 4

CITY OF BOWLING GREEN

While the City of Henderson's City Commission continued to consider fairness legislation, the fairness movement publicly reached Bowling Green, Kentucky, several counties to the east, in mid-September of 1999. The movement in the south-central Kentucky city, though, stands in stark contrast to those which came before it. Not only was it the only locality in 1999 to consider an ordinance and then fail to expand its existing Civil Rights laws to include its LGBT citizens, Bowling Green proponents failed even to get the measure in front of the City Commission. The limited evidence that survives from the period, while making it difficult to construct a comprehensive narrative of the events which transpired that acrimonious fall, conveys a sense of the forces at play in the community. The sources reveal a vociferous opposition that predominated in the college town and controlled the debate by their absolute strength in numbers. Though working in hindsight, one clearly sees that the fairness ordinance had little chance of success in the city from the very beginning. Moreover, its ready defeat at the hands of the overwhelming opposition indicated that the local movement for fairness had finally stalled in Kentucky, not just for 1999, but for several years to follow.

While news that proponents for a fairness ordinance had initiated the local process did not hit the media until September 21, 1999, the Lambda Society, an LGBT student group at Western Kentucky University (WKU), had already started developing a movement that summer. In June 1999, then-city commissioners Sandy Jones and Dan Hall would later report that the group approached them individually about sponsoring fairness legislation. Jones, after reviewing "all of the information regarding the fairness ordinance" refused to do so but gave no explanation for her decision. Her reasoning, however, would come out later in the year. Likewise, Hall also refused the invitation by the student group, but he, on the other hand, informed its members that he would neither sponsor nor vote for such a measure.[1] This provided the first portent, though not known at the time, that the proponents faced an uphill battle.

Through the few months in which Bowling Green debated the idea of a fairness ordinance, the Lambda Society would not work alone. Although the student group acted alone in starting the Bowling Green movement when they contacted the commissioners, they later joined forces with the Kentucky Fairness Alliance (KFA) when the latter group heard about the former's efforts from the press.[2] This, however, stands in contrast to the other Kentucky movements that year. In these other cities, all of the groups which petitioned for a fairness law already maintained ties to the KFA. Only in Bowling Green did the Lambda Society develop this relationship *after* beginning the process.

While the Lambda Society's summer actions technically mark the known beginning of the Bowling Green movement, the Lambda Society, now partnered with the KFA, made their first public move on September 21. On this date, the community organizer for the KFA, Maria Price, and the interim president of the Lambda Society,

Matt Leffler, visited a meeting of the Bowling Green Human Rights Commission (BGHRC) by invitation to discuss the fairness issue with the 15-member body.[3] The Commission requested the visit so that its members could "be armed with information rather than the half-truths and hearsay, so [the commissioners] can make an informed decision." At the same time, the two organizers wanted to convey to the body "exactly what the ordinance is" and "the benefits of it." While they understood that the rights-oversight group possessed no legislative power, obtaining the local HRC's support seemed a prerequisite to the larger legislative push. Leffler called it "a focal point in getting the ordinance passed." In every Kentucky locality that approved a law that year – Louisville, Jefferson County, and Lexington – supporters brought the issue "to the local human rights commission first."[4]

As with all the 1999 proceedings in Bowling Green where local leaders discussed the fairness ordinance, few records of what the actors discussed remain from the September 21 meeting. The evidence does show, though, that Price and Leffler attained their stated goals in the hearing. After informing the 15-member body about the basic rudiments of fairness ordinances, they stressed to the members the importance of the commission's support in passing a law in the city. The two then explained the significance of local movements to the commissioners.[5] In acknowledging that fairness had become both a local and statewide issue, Price spoke to an argument of convenience which could arise out of this dichotomy. The bifurcated system of government allowed opponents at the local level to claim that the state should decide the issue, while

opponents at the state level would assert "that if (cities)[*] really want this to happen, they will decide to do it themselves."[6] Leffler pointed out what it would mean to affected Bowling Green residents. "We live and work here in Bowling Green," he said. "I would like to know my own local government thinks this needs to be addressed now and not wait for someone else to do it."[7] Moreover, another successful local movement would help "remind state legislators that this is not only the right thing to do, but politically safe as well."[8]

At this meeting, a handful of BGHRC commissioners expressed concerns indicative of the charges that opponents would soon levy against the fairness measure. Jim White's concern centered on whether or not civil rights laws specifically protected LGBT people when he thought that legislators designed these measures only to protect "groups because of accidents of birth." He believed homosexuality, on the other hand, to be a non-immutable lifestyle choice.[9] Others followed his line of reasoning and worried about whether or not fairness legislation would grant "a special right and would give certain groups special privileges."[10] Price did, of course, countered these concerns, bringing up the fact that religion also constitutes a protected choice to address the former. For the latter, she turned their 'special rights' suggestion on its head. "What is a special right now in this country is that people can discriminate without impunity."[11] Despite this dialogue, nothing definitive came from this initial meeting. Before the BGHRC would decide whether or not to support such a measure, they wanted to obtain more

[*] In this section, anything inside a direct quote contained within parentheses – () – is an edit made by the local newspaper, the *Park City Daily News.* Anything in a direct quote contained inside of brackets – [] – is an edit that I have made.

information about fairness ordinances and solicit the public's opinion. For this reason, the group decided to schedule a public hearing at a later date.[12]

The record does not show whether or not Leffler and Price presented the BGHRC with a draft copy of an ordinance in this meeting; nor does it show specifically what proponents of the Bowling Green ordinance designed the fairness measure to protect against. No text survives, but the evidence suggests that a piece of legislation was drafted and proffered to the BGHRC for deliberation. Though the Bowling Green City Commission (BGCC) never weighed the fairness ordinance for a potential law, in all probability, they did review a draft of the text. While the record does not confirm or refute this, when one considers that the five-member legislative body did ultimately make a decision on the ordinance, though not in official capacity, logic suggests that the members had a copy of the measure on which to base their decisions; however, one cannot be certain.[13]

Likewise, one cannot definitively know exactly what the fairness ordinance covered, what it exempted, or how the writers framed the wording. It is possible, however, to piece together some parts of the measure and make some provisional assumptions about others. For instance, proponents did present the BGHRC with a written ordinance catalogued as BR85, though the exact date when this was done is unknown. This most likely occurred sometime between September 21, when proponents first met with the commission, and November 18, when the commission took their final vote on whether or not to place the body's support behind future fairness legislation if the City Commission decided to hear the issue.[14] The only other definitively known information is that the proposed fairness ordinance banned "discrimination in housing,

public accommodations and employment on the basis of sexual orientation" and exempted "religious organizations."[15]

This comprises all that the record explicitly states about the text of the fairness ordinance, however, one can safely speculate about other provisions it may have included. For instance, the KFA involvement with the Lambda Society in suggesting the wording of the measure means that it undoubtedly read similarly to those passed in Louisville, Jefferson County, and Lexington and to the one under consideration in Henderson because this group actively participated in all of these movements.[16] Even if the Lambda Society members entirely drafted the ordinance on their own, however, they likely structured their text of these precedents. Suggesting this same point, the local newspaper, the *Park City Daily News*, ran a brief article on October 5 titled "What the rights ordinance means." Instead of looking at the actual Bowling Green ordinance, though, the paper referenced the other local Kentucky laws created earlier that year.[17] This could mean a number of things, but it probably connotes that the KFA had not yet presented a draft of their ordinance to the BGHRC at this time. Because of this, the *Daily News*, knowing about the KFA's involvement in the other localities, likely referenced the other local laws created earlier that year in order to provide Bowling Green citizens with an idea of how any text proposed by the group would read. If this is the case, it narrows the window of presentation to between October 5 and November 18.

Regardless of the actual scenario, it is feasible to say that Bowling Green's ordinance was based upon those which predated it. Therefore, as the newspaper pointed out, the employment provision would probably cover hiring, firing, promotions, and pay. Also, employers would most likely be prohibited from "publish[ing] notices

indicating…any preferences based on sexual orientation." The housing provision probably governed "sales, repairs, and financing." In public accommodations, it most certainly prohibited "people and companies from denying services and goods based on sexual orientation." Moreover, in addition to its known religious exemption, it undoubtedly excused landlords who rented space in an "owner-occupied" building with a low number of rented units. The ordinance would also assuredly have monetary fines for violations.[18]

About one week after the September 21 meeting between proponents and the BGHRC, the *Daily News* reported that the group would decide how to "garner public opinion" on the topic of the fairness ordinance on October 19.[19] Their decision, though, came one week early on October 12. On this date, the BGHRC announced that it had scheduled a three-hour public hearing on the measure for November 5 at the local City Hall, with one hour each for proponents, opponents, and the BGHRC commissioners to make their respective points. To get the most public input, the commission also announced that, for the month preceding the forum, the body would accept "written comments and e-mail" from the general public. Conversely, the commissioners would not accept any commentary made in person or by telephone. While some members believed that the group should exclude anonymous remarks, convinced that people who wanted to publically opine should stand by their convictions, the majority decided to only discourage these types of communications because "some people might not come forward for fear of discrimination."[20] Lee Huddleston, the BGHRC Chairman, informed the public that proponents should write and later speak with the goal of proving that

"there is a need [for the ordinance] and that it won't be disruptive to the community." Opponents, he said, would have to demonstrate the opposite.[21]

The outpouring of opinions from both sides commenced immediately after the announcement came that the fairness issue had reached Bowling Green. Before the BGHRC even started formally accepting the community's opinions, its executive director reported that it had "been deluged with phone calls." In fact, the group was in the process of gearing up for a meeting to determine how exactly it wanted to solicit the public's views on the controversial measure.[22] When the debate exploded in the south-central Kentucky community as the measure progressed, it quickly became apparent that the opposition dwarfed the proponents in sheer size. Had the contest in front of the BGHRC been simply one of numbers, debate would have been futile. Within three weeks of the September 21 announcement, the *Park City Daily News* had already logged "more than 50 letters" about the fairness ordinance.[23]

While the newspaper does not give a breakdown, other figures do show the uneven split between the opponents and proponents. After the BGHRC began counting the written communications that it received in mid-October, an early tally taken at the end of the month revealed the huge discrepancy. "More than 150 people have asked the commission to oppose the Fairness Ordinance," the *Daily News* reported. "Only 25 people have written or e-mailed their comments in favor of the ordinance."[24] Had the Commission included phone calls in their calculation, the number would undoubtedly have soared even higher. A later sum revealed that the gap between opposition and proposition had narrowed some but remained large. On November 2, just before the November 5 public hearing, the BGHRC reported that of 368 total communications

received only 65 supported the ordinance, meaning that 303 did not.[25] By the time the BGHRC either stopped counting, collecting, or receiving community response, the current Executive Director and then-Commissioner Linda McCray claims that the body received over 5,000 predominately-opposed communications. Further testifying to the superior numbers of the opposition movement, she estimated that out of every 100 responses, 95 of these were against the Lambda Society and KFA's proposal.[26] Whether proximate to the actual percentage or not, her rough estimate indicates the impact that the opposition's numbers had on the discourse, minds, and memory of the community.

These numbers, however, did not necessarily reflect individual opinions, nor did they, as it would turn out, predict how the BGHRC would decide. In truth, despite the fact that local clergy vowed that they would not use their pulpits "as a political format" to disseminate their opinions on the "gay issue," petitions and resolutions from area churches comprised the bulk of these statistics.[27] In the first count released by the Commission, of the "more than 150" opposition communications "more than 100" of these came packaged as a "petition…and a resolution opposing the ordinance" sent by Greenwood Baptist Church.[28] The later tally of 303 opposed communications, encompassed these in addition to about 125 more letters from Calvary Baptist Church parishioners.[29] Hillvue *[sic]* Heights Church also sent a letter opposing the ordinance on behalf of the congregation, but only the Rev. Stephen Ayers signed it, meaning that the Commissioners only counted it as one communication.[30] When these numbers are added up, it shows that of the 303 opposition communications, at least 226, or 75 percent, came from local religious organizations. This percentage is actually probably a little higher,

though, because the paper consistently prefaced these numbers with the delineator "more than" or something similar.

Instead of proffering a Biblical argument in opposition of the fairness ordinance as one might expect, Hillvue's letter founded its opposition on grounds that the church opposed "the granting of special rights to any group based on behavior."[31] Similarly, the Reverend Dr. Brad Johnson of the local church Living Hope Baptist Church opposed "giving 'special treatment' to a group of men and women who 'choose' to live in same-sex relationship."[32] These stances become less surprising, however, in consideration of the fact that the 'special rights' argument notably predominated the opposition movement's discourse. While numerous opponents simply opined that the fairness ordinance movement was one "clearly…for 'special rights'" or something similar and left their opinion at that, at least a few chose to elaborate on their point.[33]

One such writer called the actual motive behind the fairness ordinance "giving special rights to homosexual behavior" and then stated that "We already have laws giving fundamental rights to every citizen."[34] Providing reasons for their fear of bestowing 'special rights,' some opponents stressed their desire for limited government. "Do we really want our public officials at all levels to be more and more involved [in defining rights]?" one woman asked.[35] Another man spoke of considering the need for action before lifting "the heavy hand of legislature…[for] an ordinance [that] would provide special legislation protection for homosexual conduct."[36]

Opponent Krystyna Crawford, more than any other, developed the 'special rights' argument to its fullest capacity. In a lengthy commentary centered on the three establishing criteria to define those individuals "belonging to a minority group," she

sought to demonstrate, point by point, exactly why LGBT peoples did not meet these civil rights prerequisites and therefore why no other classification but 'special rights' would accurately describe the fairness ordinance. First, she attempted to show that LGBTs "have [not] suffered a history of social oppression" because of their failure to express a "lack of ability to obtain economic mean income, adequate education or cultural opportunity."[37] Crawford cited statistics obtained through "Marketing research done by gays themselves" to illustrate that LGBTs are "enormously economically advantaged compared to" both minorities and "the general population." This advantage not only included income, but also superior educational achievement and a greater number of LGBT-held "managerial positions."[38]

According to Crawford, to meet the second criterion for minority status, a group "must exhibit obvious, immutable or distinguishing characteristics…that define them as a discrete group."[39] This principle is the one that neither those for or against could definitely prove and thus caused the most contention. Nevertheless, adhering to the 'special rights' line of reasoning, Crawford believed that sexual orientation did not qualify as an innate character trait. Instead, to her, "Homosexuality is a learned acquired behavior that can be changed through counseling, psychotherapy, etc." Unlike other minority groups, "Sexual desire is something that can be changed – unlike one's color, race or gender." In contrast to homosexuality, she says, the latter "are benign, non-behavioral characteristics that one cannot change."[40]

In order to attempt to show that her beliefs counted for more than just opinion, she alluded to research conducted "by numerous psychiatrists/psychologists in the 1970s and 1980s" and by "ministry outreach of several ex-gay organizations" to attest that one can

change their sexual orientation.[41] Basing her contentions on these sources, however, is tenuous at the very least because Crawford failed to establish that the American Psychiatric Association (APA) removed homosexuality from its list of mental illnesses in 1973.[42] While not known at the time, the same group has now denounced sexual reorientation therapy. In 2009, the APA released a resolution denouncing therapy by ex-gay associations, stating that little evidence exists supporting the claims made by the organizations.[43]

Despite the debate over whether or not homosexuality is learned or innate, many of the opponents agreed with Crawford on this point. The idea that homosexuality could qualify one for discrimination protection as a minority shocked one anonymous writer. "How outrageous to equate sexual orientation with race, gender, color or nationality!" the writer opined.[44] Another expressed similar disbelief, claiming that he could not "believe that anyone would have the audacity to associate sexual behavior with what African-Americans or women have gone through in American society."[45] Herb Harkleroad, an internal medicine specialist, appealed to his degree to take a seemingly medical science approach to the question in order to demonstrate that LGBT people learned their sexual orientation. He pointed out that no definitive science proves a genetic basis for homosexuality and that he believed "it is fundamentally wrong…to rank homosexuality (as something people are born with)."[46]

Moving from the second criterion and onto the third, in words that would resonate with those who accused LGBTs of promoting a 'gay agenda,' Crawford worked to show that "As an entire class, [homosexuals do not] demonstrate political powerlessness." To premise this conclusion, she tried to establish the effectiveness of LGBT "political

lobbyists" by pointing to anti-discrimination victories, though she for some reason ignored the other fairness victories in Kentucky that year and instead referred to "executive orders in several states to exclude discrimination on the basis of sexual orientation in state employment." She also vaguely referred to political offices which homosexuals had won in Congress and "numerous major city councils," but again, Crawford failed to offer specifics. Through these positions, she states that LGBTs have "garnered the AIDS disease the status of the first 'politically protected' plague in history." Having worked though her argument, she then concluded by reiterating her belief that the fairness ordinance would grant special rights.[47]

Though Crawford is right to point out that LGBT individuals have secured political office and, in some instances, worked it to their advantage, the question remains whether the number of offices they hold represents the total percentage of the population that they comprise. Moreover, just because LGBT citizens may hold office elsewhere does not necessarily mean that they do so at the local level in Bowling Green. Therefore, gays in the city could very well still face "political powerlessness," a fact which would place her argument on unstable ground. Despite these potential shortcomings, Crawford proffered a compelling argument onto which some in the community would latch because it seemed to offer empirical data to support their prejudices.

If the 'special rights' argument dominated the opposition's verbiage, Biblical denunciations followed as a close second. While Hillvue Heights and Living Hope may have adopted the 'special rights' posture to denounce the fairness ordinance, other churches more predictably decried the measure on moral grounds. The petition from Greenwood Baptist Church, for instance, spoke of how the ordinance would violate the

beliefs of some community members.[48] Likewise, Mark Brant, pastor of Fountain Square Church, responded to headlines which insinuated that "the church has nothing to say about homosexuality or the current 'fairness' discussion." Contrary to this, he claimed, the "the church does have an opinion – at least my church and its pastor [does]." To Fountain Square Church, the entire issue of fairness legislation "is a moral issue." To make the measure law would be to "yield to its baseless rationalizations" and "[fail] as a society." The fairness ordinance, he said, "encourages sinful behavior" and to ratify it would enslave the community's liberty "to that sin." In short, the legislation would "extend personal favors to those caught up in sin."[49] Another pastor claimed that because no laws exist which "force people to accept the Bible and Christianity," then no laws should "make people accept (sexual preference)."[50] Many other churches, meanwhile, gave their parishioners a script to follow when writing their opposition letters to the BGHRC. Linda McCray stated that "many times they were quoting the Bible."[51]

Many in the community also wrote independently of churches to express their Christian-based rejections of homosexuality and the fairness ordinance. One such citizen writing anonymously addressed his letter "to the queers that are wanting a fairness ordinance…These people have a right to choose who they sleep with," he said, "but they don't have the right to contaminate the rest of the world. They should all be put on their own island so they can have their own Sodom and Gomorrah."[52] While other religious statements did not conspicuously drip with the level of hate that this one did, some did employ the Sodom and Gomorrah argument. One woman, for example, stated that homosexuals engage in "a sin that God condemns in His word" and as such, "will not inherit [His] kingdom." The example of Sodom and Gomorrah offered in the Bible, she

says, proves that God "will not hesitate to reward sharply those who will continue their sins." The inhabitants of "those cities were evil" and paid a just price for it. "God has defined sins in His Bible. He as even defined Homosexuality. Who will argue with God?" she concluded.[53] Following her line of reasoning, David Gordon wrote that "God condemned homosexuality, plain and simple. There is, therefore, no justification for discussing whether to legitimize it. Unless, of course, one is not concerned with God's law."[54]

Perhaps these opponents truly did fear an impending judgment delivered from God onto the community. What seems more likely, though, is that they feared that an extension of discrimination protection to encompass LGBTs would simultaneously infringe on their own constitutionally guaranteed rights to freely express their religious beliefs. Evidencing this, one *Daily News* reader wrote that the fairness ordinance "hampers peoples' freedom of expression and religion by forcing them to employ people they would not choose for the businesses they own."[55] According to one article, Pastor Mike Lee of Eastwood Baptist Church made this point to the BGHRC commissioners. He did not like that the ordinance potentially prohibited religious adherents from living their lives by the moral values that he believed God ordained. "Beliefs we are allowed to have, but not act on are at best hypocritical and at worst, totally useless."[56] The religious exemption written into the ordinance apparently did not matter. As Mike Lee's testimony depicts, these opponents believed in their right to exercise their convictions anywhere and in every type of employment.

Closely tied to the religious line of reasoning was the opposition's position that the fairness ordinance would justify what they regarded as an immoral lifestyle. Kent

Ostrander, the omnipresent Executive Director of the Lexington-based Family Foundation and exponent of this view, briefly made a public appearance in the Bowling Green discussion to articulate this concern. Fairness ordinances, he said, are "an attempt to grab the force of law and power of government to legislate a new morality."[57] One anonymous writer extolled Ostrander's message and repeated it verbatim in the newspaper.[58] Another felt that the "special law" would justify homosexuality, i.e. "this immoral behavior."[59]

As the writer who echoed Ostrander demonstrated, the immorality argument easily translated into a slippery-slope line of reasoning as these opponents believed that legitimizing one immoral behavior would lead to the justification of protections for another. This writer followed her immorality statement with the question "What then? Putting their agenda into our schools, teaching our children that they live an alternative lifestyle that is acceptable.*[sic]*"[60] Another writer framed her opposition in a similar way asking "What's next? Bestiality? Child Molestation?"[61] John Chamberlin's opinions stressed the proliferation of litigation, calls for domestic partner benefits, and movements for same-sex marriage laws which the ordinance would create and demonstrated the intrinsic role that fear for the safety of Bowling Green's children played in this argument. "It would make it easier for schools to introduce literature (that) promotes the acceptability and even desirability of the homosexual lifestyle," he said.[62] Another man, pointing out that he is not "homophobic or bigoted [*sic*]," stressed his opposition to the idea of "a role model teaching my child that homosexuality is OK *[sic]*."[63] The writer who called LGBTs "queers" professed his objection to the idea of gay employment in schools and the Boy Scouts of America.[64] Likewise, the Greenwood Baptist Church

resolution cited a potential for the fairness ordinance to open a "flood-gate of demands upon our public schools, such as teaching to our children the acceptability of the gay or homosexual lifestyle in violation of both the teachers' and parents' beliefs."[65]

One individual claimed to have seen these parade-of-horribles situations played out in his former place of residence. Alleging to have moved to Bowling Green from an unnamed community with a similar fairness law, Dennis Strom professed that "It led to a number of legal challenges, it affected the schools adversely and it created an avenue for other, more provocative ordinances to be passed."[66] In Kentucky at least, the passage of time has shown that parade-of-horribles arguments, such as those he contended to have seen come to pass, have amounted to nothing more than slippery-slope fallacies. While some have filed court challenges to the laws in Kentucky, all have been dismissed, albeit for procedural grounds. The United States Supreme Court's ruling on Colorado's Amendment Two (discussed in the Lexington chapter of this paper), however, supplies a portent of how a properly brought challenge would probably play out. Furthermore, the fact that fairness laws remain on the books in Greater Louisville and Lexington 12 years after their ratifications suggests a lack of adverse effects on these communities. Moreover, this raises the question of why Greater Louisville would have opted to reenact the community's fairness law upon the government merger there in 2003, four years after the fairness ordinance's initial passage, if it negatively impacted the city and surrounding Jefferson County. All of these facts raise questions about the integrity of Strom's claims. This is not to say that his former community did not provide an exception to the rule; however, in light of this evidence, in Kentucky at least, an exception it would be.

The parade-of-horribles argument reflected the same paranoia and language of force explicit in another type of opposition proffered in Bowling Green. This position dripped with the rhetoric of a conspiracy theory. Chamberlin was most notable enthusiast of this argument and penned a lengthy response to the *Daily News*' request for reader response. He wrote:

> Yes, the gay rights issue has arrived. A very carefully orchestrated campaign, carried out at least in part by the National Gay and Lesbian Task Force, targeted Kentucky in 1999 with a number of "softening" events across the state. In addition, key cities in Kentucky have been artfully persuaded to adopt 'fairness' and 'nondiscrimination' ordinances. Now it's Bowling Green's turn to decide. Although couched in the most persuasive and reasonable-sounding terms, non-discrimination ordinances, which include sexual orientation, have ramifications of which the citizenry should be aware.[67]

As Chamberlin implicated the National Gay and Lesbian Task Force, Bowling Green resident Sandy Walters also incriminated other national organizations in the local movement for fairness legislation. "It is my opinion that these movements are a move by the very vocal minority composed of gays and lesbians and the ACLU to force upon the silent majority unneeded special considerations," she said.[68] Kent Ostrander offered the same point, though he left out the incrimination, when he accused the fairness ordinance of being "clothed in fairness and civil rights verbiage." "They've successfully captured the term 'fair'…stolen the fervor of the civil-rights movement by capturing the term 'discrimination,'" and applied both to their cause, he said.[69]

The local newspaper's Editorial Board even presented the conspiracy argument, in addition to several others, as it took its place as the only Kentucky newspaper in 1999 from the communities that considered an ordinance to come out against the enactment of

fairness legislation. Essentially opening with the conspiracy verbiage, the *Daily News*' September 30 editorial tells that:

> Anti-discrimination laws, like hate laws, are clothed in praise-worthy rhetoric that make opposing them seem almost un-American. Backers leap into the verbal fray and claim opponents believe in discrimination and hate…Seizing a political opportunity, many other groups – such as feminists and gays – cloaked their political desires in the rhetoric of civil rights. It was remarkably effective.[70]

In addition to this line of reasoning, the paper employed almost every other opposition contention against the ordinance, ultimately coming to the conclusion that "reason and intelligence," which "are supposed to count for something in American politics," advise against the passage of fairness legislation. The newspaper's Editorial Board spent considerable time developing the 'special rights' argument, calling the fairness ordinance an act of "special legal dispensation" designed to protect "a guy" who thinks "Brad Pitt is cuter than Neve Campbell."[71] The Board then cites Krystyna Crawford's statistics and attempts to buttress her point about the second criteria for minority status. In regards to the "debate in the scientific community as to whether homosexual behavior is genetically based or learned," the Board says, "It really doesn't matter. Anti-discrimination laws are not designed to protect sexual behavior, homosexual or heterosexual." To pass a law which does so, according to the *Daily News*, strays from the original intent of anti-discrimination laws. They "were passed because of horrendous conditions in the Old South," conditions to which the editorial board believes LGBTs have not been subjected. To even suggest "sexually oriented anti-discrimination" laws evidences "the [degeneration of] civil rights laws," which by some people's standards "should allow the nearly blind to drive buses or fly commercial planes."[72]

After alleging that "There is no evidence of rampant discrimination against gays in Bowling Green," the Board briefly touched on the freedom of religion argument, claiming the ordinance would be "a step from tolerance to totalitarianism." The editorial staff then concludes their piece with the statement: "The right to life, liberty and pursuit of happiness is an opportunity, but such things do not come with a government guarantee."[73] Despite immediate objections which one might have to this statement, on this point the Board is actually correct; Constitutional law, or law in general for that matter, is not self-executing. Therefore, while the framers may have designed the Constitution to protect these inalienable rights, history has shown that they indeed do not come with a government guarantee. If they did, the editorial board would not have debated the contentious fairness issue in 1999. Nor would the legislation's proponents have disagreed with the opposition's claims that LGBTs already had protection under existing law. If these rights did come with a government guarantee, then one could classify the 1999 fairness movement in Kentucky as superfluous.

Proponents of the fairness measure did disagree with this claim, however. In their mind's eye, if Jefferson's inalienable rights did not come with a government guarantee then proponents believed that they should. Perhaps they could accept that existing laws protect the majority and recognized minorities, but harsh experiences had shown them that the Constitution did not include everyone. The movement for fairness in itself demonstrates this point, and as the debate moved from the opposition to the proposition, it was this point that the latter tried in vain to make. Acknowledging this line of reasoning as fictitious, the fairness advocates made their own arguments in support of the

ordinance, arguments which stood in stark contrast to those propelled by their political adversaries.

If the 'special rights' argument dominated the opposition's position, it also controlled the discourse of the proposition. While conceding that the ordinance would confer rights onto a subsection of the population, proponents believed that the risk of discrimination that LGBTs faced made these rights anything but special. To this group, the ordinance did not create 'special rights;' instead, it guaranteed the "basic human rights" to equal opportunity in employment, fair housing, and the free exercise of public accommodations.[74] Following this same reasoning, one proponent referred to employment and housing as "not luxuries; they are necessities."[75] The words of Dr. Patricia Minter, a "historian of law and race relations" at Western Kentucky University (WKU) sum up this position. "Equal opportunity in housing and employment regardless of sexual orientation is the most basic right in a democracy that purports to guarantee equal justice under law."[76]

One gay Bowling Green resident turned the 'special rights' argument on its head, avowing "Gays don't need special rights – no one needs special rights…No special rights, just equal rights; no more, no less." As long as the existence of discrimination by "gay-bashers" persisted in the community, the resident stated, LGBT citizens needed a fairness ordinance for extra protection.[77] Calling the ordinance a "step in the right direction," resident Paul Mitchell stated that "No one is asking for preferential treatment. All that is asked for is equal access to housing and employment opportunities."[78] Another citizen criticized the high numbers of anonymous writers in the opposition before asking the simple question, "[A]ren't all rights special?"[79] In a way, this position

became the battle cry of the proposition as numerous writers challenged the 'special rights' argument with this alternative view. Even the stickers worn by proponents at the public hearing endorsed this slogan. Atop a bright yellow background, they read: "Fairness, No More, No Less."[80] What made the ordinance fair, Matt Leffler claimed, was its requirement that "employers judge people by work performance and what they do in the office," instead of upon "supervisors' moral decisions."[81]

One proponent even had an answer for Crawford's income statistics which she and the *Daily News* Editorial Board used to buttress their 'special rights' claims. Pointing out their strategic use of the statistics "as if this were proof that discrimination against gays did not exist," he offered an alternative way to view these numbers. "[P]erhaps the only gay people who feel secure enough to identify themselves as gay to a survey taker are those who feel more secure than average because of their income success," he posited. Moving on to point out the fallacy of this argument, he then asked, "Would it be all right *[sic]* to discriminate against Jewish- or Japanese-Americans if their incomes are above average?"[82] Because 'no' is the obvious answer to this question, the author makes the point: 'What makes LGBTs different from any other historically persecuted group?' His answer is implied –'nothing.'

Others absolutely agreed with him. After all, the two sides' differences on the 'fairness' of this ordinance and whether or not it guaranteed 'special' or 'equal' treatment obviously translated to divergence on other issues as well, such as the relationship between the current movement and others to combat discrimination, past and present. Unlike the opponents, proponents perceived a clear connection between the current movement for civil rights protections and historic ones, probably because they disagreed

with their adversaries with their belief that homosexuality *was* innate and *not* a chosen lifestyle. Exemplifying this point, Brandy Felty asked, "who in their rights minds would choose to be gay in this day and age knowing that the world in which we live is so consumed with hate and violence[?]" If one were to make such a choice, she said, "they may as well paint a bull's eye on their forehead."[83] Another writer spoke of a friend that "has been attracted to males…from earliest adolescence. It was not a choice he made, but a discovery that at first horrified him."[84] Clearly his horror stems from a dominant culture that regards his attractions as anathema and discriminates for the same reason.

Taking this point a step further to connect the LGBT movement to past rights struggles, one Western Kentucky University professor, speaking to the BGHRC, tied the fairness ordinance to "the 20th century" rights struggles undergone by females and black Americans in order to demonstrate that "Bigotry, prejudice and intolerance have been the rule rather than the exception."[85] Some, such as Jeff Vessels, the ACLU's executive director, sought to point out the relation between modern and historic arguments against the expansion of civil rights. Challenging the merit of the oppositions' arguments, Vessels pointed out that "Those same arguments were used to justify racial and gender discrimination for decades."[86]

A more tangible historic connection that these proponents wanted to make, one with greater implications for the present, can be seen in a series of statements by those at the forefront of the fairness movement. Greg Willis, the organizer of the proponent speakers at the community hearing, wrote a series of letters to the *Daily News* that attempted to make this connection. In an effort to potentially explain and discredit the large opposition, Willis asserted that "Civil Rights protections are never popular when

first proposed, but would anyone want to go back to the days when blacks sat at the back of the bus or women couldn't vote? Failure to pass equal rights protections for all persons would be construed as second class citizenship."[87] He draws a broader connection in another statement. "(S)ince when are civil rights based on majority vote?" he asked. "If it were simply a matter of majority rule, blacks, Jews, Asian(s), and lots of others would never have been granted the protections of the 1964 Civil Rights Act."[88]

Proponents emphatically addressed this point because two BGHRC commissioners, one of whom was Commission Chairman Lee Huddleston, made statements that strongly suggested the HRC would take a majoritarian approach to the fairness issue. The other commissioner was Jim White. "If [the debate skews] overwhelmingly one way or another, the numbers will speak for themselves," he said. Huddleston agreed with him that the fairness ordinance "is something the community should decide, one way or another."[89]

A letter sent to the BGHRC as part of the group's effort to gather public opinion, drafted by four WKU professors from the Department of Philosophy and Religion, strongly rebuked White and Huddleston for their statements, ultimately criticizing their vision of the Human Rights Commission's purpose. Doctors Alan Anderson, Jan Garrett, Michael Seidler, and Arvin Vos wrote that "a 'human rights commission" is not simply an organization for gauging or ratifying public opinion." If these bodies only served such a limited purpose, they said, the community would not even need such a superfluous body; "simply let the majority [of voters] decide what it wants."[†] The professors caution, however, that if communities had acted in this way historically, few if any changes would

[†] In this instance, the brackets represent an edit made by the authors of the letter.

have challenged the status quo. "[I]f communities had been allowed to decide by popular vote whether to have or enforce civil rights laws, the South would still be segregated today; just as it would be if proponents of such laws had had the burden of demonstrating that such laws were not 'disruptive' to the community."[90] This last sentence addresses another statement made by Huddleston in which he placed the burden of proof on proponents by claiming that they "will have to show us there is a need and that it won't be disruptive to the community."[91]

Regardless of whether or not the BGHRC continued to place the burden of proof on proponents, they still had to demonstrate both its need and benefits for the community. Without results from a formal study of community discrimination upon which to rely, proponents had to demonstrate necessity in other ways. Lauding Bowling Green as a progressive community for even considering a fairness ordinance, part-time resident and author of "Social Work with Lesbians, Gays, and Bisexuals: A Strengths Perspective," Katherine van Wormer attempted to show need by citing the high suicide rate amongst LGBT youth as cause for protection, blaming the "ridicule and mistreatment" heaped upon those "with sexual identity problems."[92] Along this same line of reasoning, one writer called to attention that while some citizens have "professed good will" towards homosexuals, even while disagreeing with their lifestyle, "we cannot ignore…that such good will is not universal. Many…persecute homosexuals without guilt."[93]

Jeff Vessels, the Executive Director of the ACLU of Kentucky, asserted that the opponent's arguments by themselves proved the need for a fairness law. Predicting that "It's only a matter of when" homosexuality receives inevitable discrimination protection, Vessels claimed that arguments made against the ordinance "demonstrated the hate many

people apparently feel for homosexuals, bisexuals and transgender people."[94] Because the Executive Director aimed his comments at the November 5 public hearing, however, he opened himself up to attacks by the opposed community who took away a very different interpretation from the proceedings. As they made their case in the media, it became apparent that he had misspoken.

After Vessels' statements ran in the media, many Bowling Green residents fired back at his comments and challenged the conclusions he derived from the meeting. Brent Crawford, who attended the public hearing, called the purpose of his comments "to spread lies about what really happened" at the event. In contrast to Vessels, Crawford expressed his pride in Bowling Green for its citizens' "civility and love that both sides shared towards each other…Nowhere was there hatred or lack of respect."[95] Likewise, Larry Caillouet placed Vessels in the group of "ill-informed outsiders…lobbyists, advocates, [and] agitators" before declaring that, despite "strong feelings," both sides "spoke respectfully of their opponents. I didn't hear the slur words that are often used to disparage homosexuals…[or] those who disapprove of homosexual behavior."[96] The most damaging comments, though, came from Bobbie Cooper who purported to have called Vessels to verify his attendance at the public hearing only to discover that "[Vessels] was neither at the meeting nor did he watch it on cable."[97] Cooper echoed Caillouet in invoking Commission Chairman Lee Huddleston's praise of the community delivered at the end of the public to discredit the ACLU's statements.[98] Statements made by Commissioner Linda McCray also seem to contradict Vessels' comments. She echoed these writers' observations about the civility of Bowling Green, calling the hearing "probably the most productive thing I saw throughout the entire three months."[99]

Why, though, would the Executive Director's comments have hurt the Bowling Green movement for a fairness ordinance? As Caillouet's comments demonstrate, the ACLU does not hold a prominent place of respect in the Bowling Green community, especially among the dominant fairness opposition group. Citizens largely view the association as having an inflammatory agenda designed to "promote a hostile and confrontational mindset" and "encourage exaggerated stereotypes and conflict." In short, the group is full of outside "agitators."[100] Therefore, Vessels' comments undoubtedly hurt the movement in several ways. First, because he did not attend the hearing, his comments opened him up to charges that his remarks were off target at best and blatant, malignant lies at worst. Second, in a movement where proponents had little evidence to prove discriminatory behavior, his remarks made it possible for the opposition to conclude that proponents had to simply fabricate instances of discrimination and find them where none existed. While ideology assuredly motivated the oppositions' interpretation of his statement, in a community where the opposition dominated, Vessels' comments did nothing to help an already-susceptible proposition by undoubtedly exposing them to further discrediting accusations.

In fairness to Vessels, he probably founded his remarks on the public hearings in other localities, having not attended the one in Bowling Green, where some opponents did make inflammatory remarks. Moreover, it is likely that even if Vessels comments were correct, many in the opposition would nevertheless have dismissed them. That is why commenting after his absence was a mistake; it only gave opponents greater fuel and justification to buttress their inevitable attacks on him, his statements, the ACLU, and proponents in general. While it is quite possible that in the Bowling Green public

hearing, at least, community organizers actively worked to keep out *ad hominem* attacks, this is not to suggest to that the community response always remained civil and free of insult. After all, such as when one anonymous individual called homosexuals "queers" and wished their destruction on a private island, hate speech did make an appearance in Bowling Green. Therefore, had Vessels directed his remarks more broadly and included other sources of public commentary, he may have had stronger grounds on which to fortify his conclusions, simultaneously weakening forthcoming opponents' challenges.[101]

This is also not to suggest that Bowling Green proponents had *no* evidence of LGBT discrimination, and indeed, at least one activist labored to make this instance known by repeating a personal story. Speaking on behalf of a friend "who was afraid to speak on their own [behalf] for fear of losing their job with the city," Nancy Cunningham told how her friend lost three jobs over the period of 20 years, all for what seemed like disingenuous reasons, including "not cleaning an ashtray out for their boss." The friend's written statement went on to express "how damaging it is to live in fear every day" and to stress that they "would not have chosen to live" a homosexual lifestyle.[102] Assuming the veracity of this story's details, one can understand why.

In speaking on behalf of her friend, Cunningham illustrated why Bowling Green proponents may not have possessed more readily available evidence of community prejudice to present to the BGHRC. The fact that she acted as a surrogate for a friend who refused to speak out of fear for his or her job, demonstrates several things. First, this trepidation serves as a testament in itself to the potentially inequitable nature of Bowling Green. Second, it is not a far stretch of the imagination to posit that this same "damaging fear," as Cunningham's friend described it, acted as the agent that silenced many who

otherwise had their own stories of discrimination to tell. Fear kept these individuals tacitly acquiescent, coercing them into privately dealing with injustices on their own and outside of the public sector. In turn, this created the incredible paucity of discrimination evidence. After all, the current Executive Director of Bowling Green's Human Rights Commission reported that the body receives complaints of sexual orientation discrimination today but has no authority to deal with them because of the failed 1999 fairness movement.[103] It is doubtful that instances of discrimination simply proliferated in Bowling Green after 1999. Instead, it seems more likely that the crippling fear has somewhat abated, consequently removing the inhibition which precluded victims from speaking in 1999. Perhaps these individuals may still fear publicly sharing their stories, but they have, at the very least it would seem, progressed to complaining in anonymity to the BGHRC.

To many other proponents, proof of real instances of discrimination amounted to a non-issue. To them, it mattered not whether proponents could prove discrimination's existence in Bowling Green because, in the words of one proponent, "if the discrimination doesn't exist – what harm would enacting a fairness ordinance create? Wouldn't a symbolic vote of approval… simply be a nice gesture towards a group often, least offensively, ignored and, more often and most offensively, maliciously maligned?"[104] For likeminded proponents, a vote in favor of the fairness ordinance would "place [Bowling Green] among other cities that have demonstrated a no-tolerance attitudes toward crimes… rooted in fear and hatred."[105] Besides placing the city "on the cutting edge of tolerance in [Kentucky]," showing that Bowling Green stands "for tolerance, acceptance and caring," would it not also make the city's citizens "safer,

happier and healthier?"[106] In the opinions of these proponents, passage of the fairness ordinance would do all of this and more. Not only would it protect "all of our [citizens] rights," it would also "offer attractive employment conditions to the many capable gay workers who would like to work in [the city]."[107] In short, proponents ultimately believed that the ordinance would only improve the entire Bowling Green community, while causing no harm to the larger heterosexual majority.

Before all of these vocal opponents and proponents could literally face each other at the public hearing sponsored by the Bowling Green Human Rights Commission, the City Commission acted in a way which provides historians examining the event in hindsight with yet another example of why the Bowling Green ordinance never had a chance of succeeding in the first place. On November 4, the day before the November 5 public heading sponsored by the BGHRC, the *Daily News* announced that the City Commission had informed the paper that, for various reasons, "All four city commissioners and the mayor…would vote against [a fairness ordinance]." These five commissioners represented all of the votes on the BGCC, meaning that a fairness law "[would] not pass in Bowling Green."[108]

Commissioner Jim Bullington, Jr. claimed that he did not make his "decision lightly." Instead, after much research and after speaking with one the commissioners from Henderson,[‡] he came to the conclusion that the fairness ordinance is [not civil rights legislation; it's not a civil rights issue; it's something you could really place the same rationale for about any group." Moreover, Bullington opined that the city should wait

[‡] Bullington undoubtedly spoke with either Commissioner Robby Mills or Russell Sights, the two commissioners who opposed the ordinance in that locality.

until the state legislature made a decision on a statewide fairness measure before acting on a local law.[109] Commissioners Sandy Jones and Dan Hall, as stated earlier, both rejected an invitation to sponsor the ordinance when brought to them by the Lambda Society earlier that year. Hall rejected their offer on the grounds that Bowling Green "[does not] need an ordinance that deals with special rights for a special interest group."[110] Commissioner Joe Denning agreed with Hall believing that current "civil rights laws and hate laws" already provide "protection for all groups. Civil rights laws don't just pertain to minorities, but to all individuals."[111] The 'special rights' argument had won the day.

This announcement, in one fell swoop, precluded any need for further discussion on the ordinance. Linda McCray stated later that BGCC's action "basically, kind of pulled the rug out from under us."[112] In a single proclamation, the city commissioners implied that they ascribed no value to what the community had yet to say on the matter or to BGHRC's recommendation which the group had not yet made. Like most people probably believed the BGCC would do, the Human Rights Commission scheduled their announcement to come after the public had symbolically had its chance to publicly speak on the measure. Despite the City Commission's sail-deflating proclamation, as the reader already knows, the BGHRC went on with the hearing "because there [were] still people that want[ed] to be heard."[113]

And the Human Rights Commission listened. They heard two hours of testimony on November 5 and then deliberated on the issue for almost two weeks before announcing their recommendations. Considering the predominance of opposition sentiment in Bowling Green, it appears that the critical letter sent by the WKU

Department of Philosophy & Religion professors made an impact on the BGHRC commissioners. Not only did the commissioners immediately back away from their initial majoritarian posture after receiving the letter, but despite the much stronger opposition showing, at least numerically, the commissioners still decided to support the implementation of a fairness ordinance.[114]

In making its recommendations, the Human Rights took a number of votes, each of which represented a different facet of the debate. Though the commissioners unanimously rejected the "concept of…discriminating against any in Bowling Green" and favored "making decisions in employment, housing and public accommodations based on a person's merits," their votes split when it came to putting teeth behind such an ideal.[115] In their recommendation to the city to outlaw sexual orientation discrimination in employment, only 11 of the commissioners voted in favor while 1 rejected the recommendation and two abstained. For the same recommendation sent to the state, only 9 supported while 4 opposed and 1 abstained. Concerning sexual orientation discrimination protection in housing and in public accommodations, the numbers dropped again to only 8 commissioners favoring such recommendations to the City Commission while 5 opposed them and 1 abstained.[116] How the votes split amongst the commissioners is not known.

The BGHRC's November 18 decision to support fairness, though, further illustrates the strength of the 'special rights' opposition argument in Bowling Green. While coming down in favor of sending a recommendation to both the BGCC and the state legislature to adopt anti-discrimination laws making sexual orientation a protected class, the commissioners rejected the exact wording proposed by the KFA and Lambda

Society, fearing "that its wording would require special treatment – not just equality – for homosexuals."[117] On this topic, Maria Price attempted to turn the limited recommendation into a positive, stating that general support of a fairness measure, which proponents received, "is actually much more important than any specific bill…[because their language] ultimately changes over the course of a legislative session."[118]

With these recommendations sent in a letter (date unknown) "to all of the commissioners and [state] representatives," after nearly two months, the movement in Bowling Green came to an anticlimactic close.[119] In the words of Linda McCray, "And then it was over."[120] In fact, the only acknowledgement the Human Rights Commission received in return from the City Commission was "a letter from the mayor thanking the BGHRC for its work." They heard nothing else.[121] None of the commissioners changed their position on the ordinance, meaning that the recommendation simply sat untouched, out of sight and out of mind. Articles in the daily newspaper essentially ended abruptly too. After the November 18 announcement, only five pieces ran before the end of the year which discussed the fairness measure, a stark contrast to the almost daily discussion that had taken place before. On January 1, 2000, a 272 word section contained in an article detailing the top-ten area news stories from 1999 discussed the fairness ordinance. It came in at number 3 on the list behind a murder-suicide and a controversy between the City Commission, the mayor, and Bowling Green Metro Utilities. The commissioners still had not acted on the HRC's recommendations and they never would.[122]

As this inaction shows more than anything else, the ordinance never even stood a fighting chance in the south-central Kentucky city because it lacked legislative support from the beginning. None of the commissioners supported the measure, and they tried to

head the movement off before it became their prerogative. The local fairness movements had finally stalled in Kentucky and would stay that way for the next several years. Covington, the next locality to consider an ordinance, would not do so until 2003. Indeed, as has been seen in Henderson, the movement would actually reverse itself as the city lost its fairness law to repeal in 2001. Similar to Bowling Green and in contrast to Greater Louisville and Lexington, though, it too never had the wider community's support.

CONCLUSION

With the loss in the City of Bowling Green, the momentum of the 1999 fairness movement in Kentucky stalled; with the repeal of the Henderson ordinance in 2001, it reversed for a period. Though the *Hyman* lawsuit continued into late 2002 in Greater Louisville, the kinetic energy created by the City of Louisville when it became the first Kentucky locality to pass an ordinance that had transferred into the surrounding Jefferson County, Lexington-Fayette County, the City of Henderson, and the City of Bowling Green moved back into the realm of potential energy by 2001. After all, the lawsuit did not symbolize forward progress for LGBT rights but, instead, it was fighting reactionaries over the progress already won. Even the decision in the action by the United States Court of Appeals for the Sixth Circuit did not offer a clear-cut endorsement of the path which LGBT rights groups had taken in the state. In effect, it avoided doing just that by overturning the decision from the lower court on procedural grounds when the latter actually did settle the matter on the merits of the case.[1]

Each of the four local movements which transpired that year contributed something significant to the fairness movement and history. The City of Louisville, for instance, started the entire thing. In Lexington, the first community to follow Louisville, Kathy Stein, Lexington's then-representative in the state legislature, credited the Louisville movement with creating "a ripple effect around the state." "It was what

happened in Louisville that jump-started it here," she stated to the local paper.[1] Likewise, in Henderson, one opponent recognized this connection when he accused the City Commission of trying to "keep up with the Joneses" and pass an ordinance simply because "the bigger cities in Kentucky" had done the same.[2] The Louisville Associated Press gave this conclusion the most ringing endorsement in an article that discussed in detail the 1999 Kentucky movement. "The gay movement has existed for three decades in Kentucky, but homosexuals didn't register significant victories until this year...The success in Louisville prompted gay activists in other cities around the state to begin lobbying their city commissioners and Human Rights Commissions for similar laws," the article stated.[3]

The evidence offered in this paper supports this conclusion. First and foremost, Louisville demonstrated that a fairness ordinance could happen in Kentucky. Once it did, proponents looked there to see how it happened. This is why there is so much overlap in the movements, notably acting at the local level and in the texts of the ordinances themselves. In addition, proponents continued to go after local laws, realizing that the political climate in Kentucky at the state level essentially precludes the adoption of an inclusive fairness law, even though the Kentucky Commission on Human Rights adopted a resolution in support of a statewide fairness law on June 19, 2008.[4] In fact, several such laws have been introduced in the state over the past decade or so, all to no avail.[5] At the time of this writing, several representatives have again sponsored legislation in the bicameral bodies of the state legislature, including two statewide fairness laws, one in each respective chamber. For the first time ever on January 4, 2011, the legislation, titled HB106, received a hearing in the House Judiciary Committee, the chamber where the bill

has always died without discussion in the past.[6] An anti-bullying law has also received attention and debate on the House floor since its introduction in the legislative session.[7]

Furthermore, while the fact that this legislation received a hearing offers hope, that it still did not make it out of committee demonstrates that statewide fairness is a distant goal and proponents of fairness must continue to turn to grassroots organizations such as the respective Fairness Campaigns which lobbied so extensively in the Greater Louisville, Lexington, and Henderson for discrimination protections in 1999. Until a state or federal law gets enacted, the attainment of fairness in Kentucky will continue slowly, in what most likely will amount to community-by-community movements for anti-discrimination ordinances at a local level. Therefore, while proponents have continued and should continue to support and lobby for statewide laws, they should also maintain their work at the local level, at least until signs emerge which suggest a state law may come to fruition. This means that, for Kentucky LGBT citizens and allies, the grassroots movement organizations remain the most intrinsic piece of the equality puzzle.

Lexington offers a perfect example of continuing the local path, especially considering that its representative, Kathy Stein (D), has repeatedly sponsored statewide fairness laws, including the current one, SB98, now in front of the Senate Judiciary Committee.[8] For the 1999 history, this movement offers the first expansion of rights beyond 'sexual orientation' protections, as its law also included protections for 'gender identity.' At the same time, the metro government went further than the employment protections offered in Louisville, offering legal recourse in the areas of housing and public accommodations as well. Jefferson County and Covington ultimately follow the

city's example. Finally, the movement is notable for not losing any of the usual complexity despite the rapidity with which it moved from proposal to passage.

Henderson and Bowling Green, in combination, represent both the end of the 1999 movement and the concomitant weaknesses of the local approach. In Henderson, religious and moral objections ultimately defeated the ordinance and shined a light on the struggle that an ordinance would probably face in a majority of Kentucky communities. In Bowling Green, while the religious opposition was nearly as strong, they channeled their opposition into the 'special rights' argument and managed to defeat even the effort to propose an ordinance on those grounds. The fact that each of these communities ultimately rejected anti-discrimination laws shows how well the opposition can organize in order to come out in strength against the local legislation. In addition, the actions of these communities demonstrate that there is no ultimate guarantee of fairness in Kentucky. Despite the stories of discrimination, official documentation was lacking ultimately giving opponents stronger grounds on which to base their rejections of such stories. While evidence from Louisville and Lexington suggests that opponents would rebuff official documentation, having such evidence does significantly weaken their objections and bolsters proponents' claims.

The defeats symbolize something else as well. As the proponents in Henderson repeatedly pointed out just before repeal, the work for fairness and justice never ends. The same can be said for Kentucky and the movement for fairness demonstrates that. The defeats in these two communities may have stalled the fairness movement but they *did not* end it. In fact, only a little more than two years after Henderson's repeal, the northern Kentucky City of Covington *unanimously* enacted a fairness ordinance that

protected in employment, housing, and public accommodations on the basis of sexual orientation and gender identity on April 29, 2003. The city acted after only receiving two complaints of sexual orientation discrimination over nearly a five-year period. Moreover, the proposition had to overcome a very well-organized and well-funded opposition to get the ordinance passed.[9]

After Covington, the movement again stalled for a period of several years after Kentucky voters approved an amendment to the state constitution in 2004 that banned gay marriage, something for which the state already had a statute.[10] Just as in 2001, though, the movement only stalled and did not end. The local fairness movement has revived in force in the past year or so and two local communities have discussed the addition of ordinances. Proponents in the City of Richmond, Kentucky presented their case in front of the City Commission at least two times in 2010, but the legislative body "took no action" either time.[11] After reporting that the November 2010 election ushered in a mayor and city commissioners that would not support a fairness ordinance, things looked bleak. In April of 2011, however, Mayor Steve Connelly suggested the formation of a committee "to consider a proposed fairness ordinance."[12] To date, the fairness ordinance remains a future goal.

Also, in May of 2011, "a committee of three members of the Berea City Council" held a public forum in the City of Berea, Kentucky to solicit opinions about presenting a fairness ordinance. At the time of the public comment session, the ordinance remained undrafted and the committee planned to hold "one or two more public forums before deciding to bring such an ordinance before the full city council." While the hearing

offers a sign of hope for proponents in that city, one council member told everyone that "The committee up here, our mind's not made up – at least mine's not."[13]

Considering that Kentucky only has three local fairness laws on the books, amongst hundreds of cities, grassroots organizations still have lots of work in front of them. While signs of hope constantly surface, the political climate remains conservative in most of the state. Arguably the two most liberal areas in Kentucky, Greater Louisville and Lexington, already have a fairness law in effect, the latter of which recently elected its first openly gay mayor, Jim Gray, the only one in the state. The *Lexington-Herald Leader* contended that "Sexual orientation was never an issue during [the] campaign," another positive sign.[14] Therefore, while it is natural for proponents to view events like this with hopeful eyes, they must stay grounded and focus on the inevitable fight tomorrow. To adopt the words of the Reverend J. Bennett Guess spoken on the eve of repeal in Henderson, "[no] loss is an ultimate defeat." With every local movement for fairness in Kentucky both that community and the state are "forever...changed for the better," and that is exactly why proponents in Kentucky must keep trying. As he pointed out, "someday, the people of [Kentucky] will" have fairness.[15]

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