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March 20, 2023

Chair Nosse  
House Committee on Behavioral Health and Healthcare  
Oregon Legislative Assembly  
900 Court Street NE  
Salem, OR 97301

RE: OGALLA Support for HB 2002

Chair Nosse,

I write today on behalf of OGALLA: the LGBT Bar Association of Oregon, to urge the committee to support HB 2002, a bill that will update the Oregon Revised Statutes to ensure access to reproductive and gender-affirming healthcare for Oregonians. HB 2002 both addresses current shortfalls in the legal framework of protection for Oregonians' basic right to healthcare within our state, and it adds additional legal protections to shore up and defend that right in the face of increasing attacks outside our state. This is a vital bill that ensures that Oregon values will continue to prevail in our state with respect to the fundamental rights that we hold close, which reflect core values such as the right to bodily autonomy and integrity, gender equality in society and under the law, and the right to make decisions about one's own body and receive medically necessary care without undue interference. Through these changes to the legal framework for the protection of such rights in our state, HB 2002 will also help to ensure that the systems of care in Oregon will continue to be run by and for the people of Oregon themselves, without inappropriate outside interference.

Reproductive freedom has always been a value strongly held in Oregon, and our legal and political institutions have reflected a strong commitment to this essential right. Our state has the privilege of being one of the most open in terms of empowering the right to bodily autonomy in reproductive healthcare. As our political leaders in this state have long recognized, reproductive healthcare is essential to ensuring equal opportunity across a broad swath of public life for many people. By protecting the right of women, trans and nonbinary people who may become pregnant to be free of undue health risks and exercise autonomy over the conduct of their own lives, we protect not only economic and social opportunities for all Oregonians, but the ability to participate fully in society. Today,



our civic institutions, all the way from the top of our state government to our legislature, judiciary, and on down, bear the marks of this commitment to autonomy and equal opportunity. The increasingly diverse array of Oregonians who serve within those institutions on behalf of the people of our state today is a direct reflection of the implementation of those values. Nurturing and continuing this progress is necessary not only for protecting everyday Oregonians' health and access to public life, but for protecting the health of our legal systems. Our legal community has been immeasurably enriched by the expansion and protection of the right to reproductive freedom and bodily autonomy in this state, and maintaining the ability of all people, regardless of gender, to equal participation in the public sphere is essential for the continued integrity of our profession.

Similarly, the right to gender-affirming care for transgender people is essential for promoting their equal rights and equal participation in our society. Gender-affirming care is healthcare, and it is often necessary healthcare. The right of transgender people to access care is an issue of core bodily autonomy, and it often implicates their equal access to necessary care without discrimination on account of gender. Access to care allows transgender people to participate more freely in society, to survive and thrive and add to the richness of our Oregon community. As a legal profession, we are deeply committed to the continued fostering of opportunity for trans and nonbinary legal professionals, a cohort that is showing tremendous growth in recent years as people who never thought they could flourish in this profession see what has become possible. This new possibility has opened up, in part, through affirmative work on the part of our government to protect and defend their civil rights. Access to healthcare they need to participate fully in public life is an issue of serious concern for our trans and nonbinary legal professionals. Yet all too often there are significant barriers to this care, including many procedures that have the most significant impacts on the ability of trans and nonbinary people to participate in our legal systems with confidence that they are seen for who they are, and that help to shield them from undue harassment and intimidation. This bill does great work ensuring and protecting access to care and, through it, equal rights for trans and nonbinary Oregonians.

This is an unprecedented moment with respect to many rights that long seemed assured. With the overruling of *Roe v. Wade* and attacks on rights to both reproductive freedom and gender-affirming care proliferating in many parts of the country, now is the time for Oregon to take a strong stand, by reiterating its commitment to protecting the rights and autonomy of Oregonians, and affirmatively acting to protect our healthcare systems and providers from challenges that may arise. While we cannot know what the future will hold, HB 2002 will reform our legislative framework for the protection of these rights in ways that both address current essential needs and that provide protections from those in other states who would seek to undermine these rights and harm providers and patients in this state.

HB 2002 meaningfully addresses legal loopholes that result in real gaps and barriers that negatively impact patients in this state, including geographic challenges that leave more rural Oregonians without adequate care options in their communities, and administrative barriers that regularly block access to



care. Many of these systems are prolix and far from user friendly for the everyday Oregonians who encounter denials, refusals or gaps, and many people are deterred from ever seeking care in the first place. Often Oregonians who face these kinds of barriers wonder about their legal options, but they may face significant access issues in terms of finding attorney support to fully understand their rights and how they may fight against denials on the basis of gender discrimination. By clarifying rights to access, HB 2002 will make a real difference in closing these gaps and making sure that people are able to access care they need without facing undue administrative barriers in our healthcare system, where many individuals lack the resources to navigate those headwinds alone and lack the resources for legal representation to help them do so.

We also appreciate the protections written into this bill for healthcare providers to ensure continued access to care. This bill does good work both in terms of privacy protections, and in terms of protecting providers licensure, insurance, and other professional necessities from adverse actions out of state. Part of ensuring the integrity of our state systems and access to care for the people of Oregon is precisely this kind of affirmative protection ensuring that the laws and actions of other states do not compromise the care being provided here. This kind of assurance is necessary for healthcare providers to feel confident continuing to provide these services even as the legal landscape changes elsewhere. This will ultimately ensure that the values and priorities of the people of Oregon, and the systems we enact and administer to give effect to those values, maintain their integrity.

While we strongly support the bill overall, we do have some areas of concern that we hope to see addressed before the final passage of this bill. First, the criminal provisions of Section 45 and companion civil suit provisions in Section 46 raise concerns about possible overreach. We appreciate the concerns that we believe motivate these sections in terms of shielding reproductive and gender-affirming healthcare services from disruption and harassment, and we can surmise significant reasons why it may have drafted in this way, but the breadth of these provisions seems to open new potential criminal liability to a wide array of people. We are particularly concerned that, in healthcare contexts, this language may end up being most impactful for people seeking treatment for mental health issues, houseless people, people with disabilities, and other marginalized people disproportionately targeted by our criminal justice system. Everyone deserves open and safe access to healthcare services, and while we deeply understand the need to ensure that safety for the kinds of care this bill is primarily concerned about, we are concerned that this protection will come at the expense of reduced safety and security for other people who already face barriers to access. For these reasons we hope that the Committee will revisit those sections before final passage of this bill. Our second concern relates to Section 9 and the shield provisions for provision of reproductive healthcare to minors. We are concerned there may be ambiguity in the current language as to the status of healthcare that falls under both ORS 109.640(1) and ORS 109.640(2) and would like to see clearer language establishing that notwithstanding ORS 109.640(2) and the new ORS 109.650(2), care falling within the scope of both provisions is not subject to disclosure without the written consent of the patient.



In sum, HB 2002 provides essential protection and assurance for reproductive and gender-affirming healthcare at a time when that assurance is urgently needed. This vital bill will help to ensure that Oregon values will continue to prevail in our state with respect to these core fundamental rights, and that Oregonians retain their right to decide what care is right for them without outside interference. We urge the committee to approve this bill.

Respectfully submitted,

Alletta Brenner

Chair

OGALLA: The LGBT Bar Association of Oregon