

**MEMORANDUM**

**TO:** Professor Dye and Professor Reed  
**FROM:** Patrick Mirzakhonian  
**DATE:** January 20, 2023  
**RE:** HIV Decriminalization

***Summary***

In your memorandum of January 12, 2023, you asked for a memorandum analyzing a bill pending in the Ohio Legislature that would decriminalize the transmission of HIV. In this comprehensive analysis, potential sponsors as well as opponents in the Ohio Legislature will be respectively identified and assessed. Additionally, stakeholders and constituents who would support and oppose the bill will be respectively identified and evaluated based on how they could influence legislators. Finally, the likelihood of success in passage of the proposed legislation will be weighed.

***Potential Sponsors in the Ohio Legislature***

One member of the Ohio Legislature that would be a potential sponsor for the pending bill is Representative Daniel P. Troy (District 23 – D). Representative Troy voted against Ohio House Bill 454, which would prohibit specific medical coverage for LGBTQ+ youth, specifically transgender and nonbinary people.<sup>1</sup> He did not shy away from disputing the supposed “medical experts” that the proponents of the bill brought forth, asserting that they are fringe members of the

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<sup>1</sup> House Bill 454 | 134th General Assembly | Ohio Legislature, n.d., <https://www.legislature.ohio.gov/legislation/134/hb454>.

scientific community and that he could just as easily verify his position as well.<sup>2</sup> This demonstrates that Representative Troy is not an individual that would be intimidated by an array of so-called “experts” with higher levels of scientific education than him. Instead, he is eager to take on a fight and to present facts and data that would support his position. Further, he does not allow his Catholic faith to cloud his judgement on the issues that matter but, rather, he puts religious dogma aside in order to meet the needs of his constituents and stands proudly to defend them.

Moreover, Representative Troy participated in Ballotpedia’s Candidate Connection survey in which he answered both personal and policy related questions.<sup>3</sup> When asked what areas of public policy he is personally passionate about, he responded by highlighting that Ohio is among the lowest in the nation in spending for abused and neglected children. He said that Ohio needs to commit more to protect the most vulnerable segments of our population.<sup>4</sup> This shows a desire to address social issues in Ohio and a readiness to invest resources to do so. It is possible to persuade him that those diagnosed with HIV are a vulnerable segment of our population and should not be treated as criminals or be discriminated against. Also, when asked who he looks up to, he answered Bobby Kennedy because he “had a remarkable ability to understand people from diverse racial and economic backgrounds [...] the sincere empathy he demonstrated to those different populations is a rare commodity in public leaders today.”<sup>5</sup> This shows that he is not only open, but eager, to help an often wrongfully stigmatized population who is disadvantaged in the eyes of the law. Representative Troy’s words exhibit that he would show empathy in the cause to decriminalize HIV transmission. Additionally, Representative Troy advocates for Ohio to remain

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<sup>2</sup> Morgan Trau, “Proposed Anti-Trans Bill Would Prohibit Care for LGBTQ Youth,” Ohio Capital Journal, February 21, 2022, <https://ohiocapitaljournal.com/2022/02/21/proposed-anti-trans-bill-would-prohibit-care-for-lgbtq-youth/>.

<sup>3</sup> “Dan Troy,” Ballotpedia, n.d., [https://ballotpedia.org/Dan\\_Troy](https://ballotpedia.org/Dan_Troy).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

fiscally stable in order to pass-through funding for health care.<sup>6</sup> He is clearly conscious of the health care needs of individuals. HIV treatment and prevention is not cheap by any means, so he is an individual that may be more inclined to empathize with the health care needs of those who are most affected by this bill. Considering his desire to stay fiscally stable, it is safe to assume that he would rather devote resources towards the wellbeing of his constituents rather than spending more to lock them up for having an incurable viral infection.

Additionally, a member of the Ohio Legislature that would be a potential sponsor for the pending bill is Senator Nickie J. Antonio (District 23 – D). Senator Antonio has long been an advocate for the HIV-infected community.<sup>7</sup> She was awarded the Ursuline Piazza Red Ribbon for her extensive work in increasing HIV/AIDS services and resources, and is a founding member of the NorthCoast HIV/AIDS Coalition. During her time with the Coalition, she was responsible for assisting in the effort to identify those who had HIV, making sure they received proper medical care, and that they stayed in care.<sup>8</sup> It is safe to say that Senator Antonio holds the HIV-infected community close to her heart and that she has gone above and beyond in ensuring that they are taken care of. Someone who has devoted as much time and resources to the cause of HIV treatment and prevention as she has will likely be first in line to support a bill that would decriminalize HIV transmission.

Furthermore, Senator Antonio was pivotal in the passage of Ohio House Bill 92.<sup>9</sup> She authored this legislation which created a syringe exchange program for the purpose lowering the

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<sup>6</sup> *Id.*

<sup>7</sup> “State Representative Nickie Antonio Honored with Ursuline Piazza Red Ribbon Award,” Plain Press, October 4, 2015, <https://plainpress.blog/2015/10/04/state-representative-nickie-antonio-honored-with-ursuline-piazza-red-ribbon-award/>.

<sup>8</sup> *Id.*

<sup>9</sup> “AIDS Taskforce of Greater Cleveland Applauds as Ohio House Passes Landmark Needle Exchange Bill (H.B. 92),” AIDS Taskforce of Greater Cleveland Applauds as Ohio House Passes Landmark Needle Exchange Bill (H.B. 92) |

spread of bloodborne infections like HIV and hepatitis. The bill was passed in a 72 to 23 super majority vote.<sup>10</sup> As previously mentioned, Senator Antonio's devotion to assisting HIV-infected individuals could not be clearer. Equally as inspiring is her ability to put together a bipartisan effort to get this bill passed. It is clear that the current political landscape is as divisive as ever, so having this ability to work across the aisle is vital to getting legislation passed. It would be wise to approach Senator Antonio to lead the effort in decriminalizing HIV transmission since she has demonstrated a capability of bringing people together to pass bills in the spirit of bipartisanship.

### ***Potential Opponents in the Ohio Legislature***

One member of the Ohio Legislature that would be a potential opponent to the pending bill is Senator Terry Johnson (District 14 – R). Senator Johnson is a physician, so it would be difficult to lecture him about the medical component of HIV decriminalization, as he undoubtedly already possesses that knowledge. Instead, a possible angle that could be used centers around his work in criminal justice reform. He sponsored Ohio Senate Bill 288<sup>11</sup> as well as Ohio House Bill 254,<sup>12</sup> which were both broad-ranging measures that tackled various criminal laws within Ohio ranging from distracted driving to domestic violence. His sponsorship of these bills shows that he is not afraid to fight to make sweeping reforms, especially in the area of criminal justice. Considering this, it would make sense to argue to Senator Johnson that those who are subject to the policy of

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Business Wire, October 2, 2013, <https://www.businesswire.com/news/home/20131002006468/en/AIDS-Taskforce-of-Greater-Cleveland-Appraises-as-Ohio-House-Passes-Landmark-Needle-Exchange-Bill-H.B.-92>.

<sup>10</sup> *Id.*

<sup>11</sup> Senate Bill 288 | 134th General Assembly | Ohio Legislature, n.d., <https://www.legislature.ohio.gov/legislation/134/sb288>.

<sup>12</sup> House Bill 254 | 134th General Assembly | Ohio Legislature, n.d., <https://www.legislature.ohio.gov/legislation/134/hb254>.

criminalizing HIV transmission are not criminals but, rather, are vulnerable members of the community who need help.

Although Senator Johnson has shown promise in his sponsorship of criminal justice reform, he remains in the category of “potential opponents” due to the weight of his proposed addition of a “medical conscience clause” to the Ohio Senate budget.<sup>13</sup> This clause is exceedingly broad with a huge impact, as it allows medical providers to deny treatment to individuals if it conflicts with their personal beliefs. It is especially harmful to members of the community who are taking preventative measures against contracting HIV as well as those who are already HIV positive. This becomes evident when considering that the clause permits medical providers to deny access to vital medications such as PrEP and antiretrovirals simply because they disagree with the patient’s lifestyle. Regarding this, Dominic Detwiler of Equality Ohio said, “The person might not be saying, ‘I’m discriminating against you, because you’re LGBTQ’ [...] But a person being LGBTQ and having HIV could give that doctor a reason to not treat them for HIV.”<sup>14</sup> If a legislator is willing to give this much leeway to discriminate against those with HIV and, more broadly, members of the LGBTQ+ community as a whole, it seems highly unlikely that he would support passage of a bill that would decriminalize HIV transmission.

Moreover, another member of the Ohio Legislature that would be a potential opponent to the pending bill is Representative Jena Powell (District 80 – R). Representative Powell sponsored Ohio House Bill 151, which would have barred “individuals of the male sex” to participate in any

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<sup>13</sup> Karen Kasler, “‘Medical Conscience Clause’ Added by Republicans to Ohio Senate Budget,” The Statehouse News Bureau, October 8, 2021, <https://www.statenews.org/government-politics/2021-06-22/medical-conscience-clause-added-by-republicans-to-ohio-senate-budget>.

<sup>14</sup> Titus Wu and Jessie Balmert, “Ohio May Let Doctors Refuse to Give Medical Service If It Violates Their Religious Beliefs,” Akron Beacon Journal (The Columbus Dispatch, June 14, 2021), <https://www.beaconjournal.com/story/news/politics/state/2021/06/13/ohio-doctor-health-insurance-hospitals-discrimination-lgtbq-abortion-conscience-clause-religion/7635305002/>.

teams or competitions designated for “participants of the female sex.”<sup>15</sup> This bill is troubling because it would require an examination of a participant’s reproductive anatomy if their sex were disputed. According to the language of the bill, the individual, upon examination, would need to obtain a signed physician statement indicating that their sex is based upon the findings of one of the following: “1) The participant’s internal and external reproductive anatomy; 2) The participant’s normal endogenously produced levels of testosterone; 3) An analysis of the participant’s genetic makeup.”<sup>16</sup> Ultimately, this bill was targeted against the LGBTQ+ community since it required the disclosure of highly sensitive information just to be involved in sports. It is highly unlikely that Representative Powell would support passage of a bill that would decriminalize nondisclosure of HIV positivity when she sponsored a bill requiring the community most impacted by HIV to disclose their most personal information to simply participate in athletics.

### ***Stakeholders and Constituents in Support***

The hardest hit communities in the area of HIV will likely be the strongest supporters of this pending measure. For instance, African Americans make up only 12.8% of the population of Ohio, yet they make up 44% of the total number of Ohioans living with HIV.<sup>17</sup> Similarly, the Hispanic community makes up only 4.2% of the population of Ohio, but they account for 7.3% of the total number of Ohioans living with HIV.<sup>18</sup> Finally, perhaps the most staggering, is the fact that gay and bisexual men make up over half of the total number of HIV cases in the United

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<sup>15</sup> House Bill 151 | 134th General Assembly | Ohio Legislature, n.d., <https://www.legislature.ohio.gov/legislation/134/hb151>.

<sup>16</sup> *Id.*

<sup>17</sup> “View Local HIV Data for the State of Ohio on AIDSVu,” AIDSVu, May 12, 2021, <https://aidsvu.org/local-data/united-states/midwest/ohio/>.

<sup>18</sup> *Id.*

States.<sup>19</sup> These minority communities are disproportionately impacted by HIV and have a higher likelihood of supporting a bill that would decriminalize its transmission. Even if a member of these communities does not live with HIV themselves, they have a higher probability than members of other demographics of knowing someone within their community who is living with HIV. Therefore, the logical course of action would be to pinpoint which districts in Ohio have a higher concentration of these communities and start a dialogue with their representatives. However, while the proportion of HIV cases in these communities is alarming, one cannot ignore that the communities as a whole make up a small minority of the overall Ohio population. This means that it would not be as pressing of an issue that could put a legislator's seat at risk. However, in districts that are not dominated by one party, their stance on this issue could make an impact.

Moreover, the Democratic Party has taken the position that those living with HIV must be given more access to quality care, and that an AIDS-free generation is within grasp.<sup>20</sup> In recent history, it has been Democrats that have strongly advocated for solutions to health care issues. They have also garnered a much higher percentage of minority votes due to their recognition of historic inequality and commitment to improving their daily lives. Therefore, Democratic voters are more likely, when compared to their Republican counterparts, to vote for measures related to HIV decriminalization. This is evident when considering a bill in the Ohio Legislature that would simply recognize December 1<sup>st</sup> as World AIDS Day.<sup>21</sup> This bill was sponsored solely by Democrats and received no Republican support. This bill's purpose was to bring recognition to those who are living with as well as passed away due to HIV/AIDS. It would not have impacted

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<sup>19</sup> "CDC Fact Sheet: HIV among Gay and Bisexual Men," CDC Fact Sheet (cdc.gov), accessed January 20, 2023, <https://www.cdc.gov/nchhstp/newsroom/docs/factsheets/cdc-msm-508.pdf>.

<sup>20</sup> "GOP, Dem, Green, Libertarian: Their Stances on HIV/AIDS," POZ, May 28, 2020, <https://www.poz.com/article/gop-dem-green-libertarian-stances-hivaids>.

<sup>21</sup> "Oh - HCR39," BillTrack50, n.d., <https://www.billtrack50.com/billdetail/1405230>.

the state budget, nor would it have established new agencies. The fact that such a simple bill that would have merely acknowledged individuals that have been impacted by HIV/AIDS only received support from Democrats shows which party is more likely to stand on the position of HIV decriminalization. It is for this reason that Democratic voters would be at the forefront of this bill. Unfortunately, Democrats hold a small minority in the Ohio Legislature. In districts dominated by Republicans, this issue is unlikely to see the light of day. It would be sensible to focus more on democratic districts as well as closely contested districts to get the ball rolling on HIV decriminalization.

### *Stakeholders and Constituents in Opposition*

According to Pew Research, Christians make up 73% of the religious demographic in Ohio.<sup>22</sup> This large majority of the electorate naturally holds strong influence over the policy agenda of the Ohio Legislature. Traditionally, Christian voters have been more likely to oppose legislation that goes against their faith.<sup>23</sup> When considering that those who live a lifestyle that goes against Christian beliefs are the most impacted by HIV, it would be difficult to imagine that these voters would take the stance of decriminalization. Reflecting on this, legislators would understandably stay away from most issues that go against the faith of their constituents and would likely even campaign against such measures. This is true for both parties since strong Christian faith exists throughout the state. Even Democratic legislators might shy away from sponsoring this bill, especially if they are in a closely contested district.

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<sup>22</sup> "Religious Landscape Study," Pew Research Center's Religion & Public Life Project (Pew Research Center, June 13, 2022), <https://www.pewresearch.org/religion/religious-landscape-study/state/ohio/>.

<sup>23</sup> "Religious Beliefs Have Greatest Influence on Voting Decisions," Barna Group, n.d., <https://www.barna.com/research/religious-beliefs-have-greatest-influence-on-voting-decisions/>.

Republican voters are likely going to be opposed to the pending bill since the Republican Party holds a higher percentage of conservative, Christian voters.<sup>24</sup> Additionally, religious organizations that influence the Republican Party have been historically antagonistic towards individuals with HIV as well as towards increased efforts to combat HIV.<sup>25</sup> It may be true that, on its face, Republican legislators have not taken an interest in the needs of LGBTQ+ and other minority voters. Even if their own personal beliefs are empathetic to these voters, they often place their political careers at greater importance. It would put these legislators in a difficult position to choose between going against their constituents' beliefs and preserving their careers. Based on Ohio's religious demographics in connection with their party affiliation, Republican voters are likely to oppose the pending bill.

### ***Likelihood of Success in Passage***

Passage of the proposed legislation will undoubtedly be an uphill battle. Based on the facts articulated in this memorandum, the likelihood of success in passage would be slim. When considering that the Ohio Legislature is dominated by Republicans who answer to a heavily Christian constituency, one can understand the obstacles this bill faces. The communities that HIV impacts most are a small minority in Ohio. This leads to them having a smaller voice in the vote count and, correspondingly, in their influence over legislators. While there exists members of the Ohio Legislature that would fight tirelessly to defend the rights of these affected communities, their numbers are not significant enough to make meaningful change.

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<sup>24</sup> "Religious Landscape Study," Pew Research Center's Religion & Public Life Project (Pew Research Center, June 13, 2022), <https://www.pewresearch.org/religion/religious-landscape-study/compare/christians/by/party-affiliation/>.

<sup>25</sup> Ricky N Bluthenthal et al., "Attitudes and Beliefs Related to HIV/AIDS in Urban Religious Congregations: Barriers and Opportunities for HIV-Related Interventions," *Social Science & Medicine* (U.S. National Library of Medicine, May 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3519280/>.