

Testimony of David Brody Before the Nevada Assembly re: AB 207

March 26, 2021

Good afternoon and thank you for inviting me. My name is David Brody and I lead the Digital Justice Initiative at the Lawyers' Committee for Civil Rights Under Law.

The Lawyers' Committee is a non-profit, non-partisan racial justice organization founded in 1963 at the request of President Kennedy to combat discrimination and inequality of opportunity. Our Digital Justice Initiative works on issues at the intersection of civil rights, privacy, and technology, such as discrimination in online commerce, Internet-enabled hate crimes, and discriminatory uses of personal information.

Public accommodations laws are a cornerstone of civil rights protection in the United States. These laws are one of the key mechanisms used to end Jim Crow segregation and discrimination in everyday commerce. Many of these laws were enacted during the Civil Rights Era in response to protests, sit-ins, and boycotts by Black Americans and others seeking equal rights.

Today, if a business posts a sign that says, "Whites Only," it should not matter whether it is written in ink or pixels. The discrimination is the

same. The harm is the same. And under Nevada law, the legal consequences should be the same.

Public accommodations laws are general purpose anti-discrimination statutes. They state that if a business offers goods or services to the general public, they must serve everyone regardless of race, sex, religion, national origin, sexual orientation, disability, or other protected characteristics. Classic examples of places of public accommodations include hotels, stores, restaurants, theaters, buses, and stadiums.

These laws, including Nevada's, typically prohibit two forms of discrimination. First, they prohibit covered businesses from denying service or charging higher prices on the basis of protected characteristics. Second, they prohibit violence, threats, or harassment by third parties when someone seeks to patronize the business. To give the historic example: these laws both prohibit a lunch counter from refusing service on the basis of race, as well as prohibit a racist mob from blocking access to the lunch counter.

Despite all of our advances on civil rights, discrimination and hate continue today. Sadly, we saw it just last week as hateful violence tore apart businesses run by Asian women in Georgia. Hateful threats and

attacks on Asian Americans are spiking nationwide. These types of incidents interfere with equal enjoyment of places of public accommodation by intimidating our neighbors, especially senior citizens, from feeling safe when they go out in public.

These harms occur online as well. Online threats, harassment, and intimidation frequently target people of color, women, LGBTQ individuals, religious minorities, immigrants, and people with disabilities. The Pew Research Center recently reported that 40% of Americans have experienced online harassment and that 25% have experienced physical threats, stalking, sexual harassment, or sustained harassment online.¹ These hateful acts interfere with the right to equally enjoy online commerce, they discourage speech and civic engagement, and they cause serious harm. Businesses suffer when customers are not safe. When a user self-censors or stops using a website because they are being threatened, that user is deprived of their right to enjoy the services offered by that business.

Discrimination also continues to infect the marketplace, where consumers of color continue to receive worse treatment and experience

¹ Emily Vogels, *The State of Online Harassment*, Pew Research Center (Jan. 13, 2021), <https://www.pewresearch.org/internet/2021/01/13/the-state-of-online-harassment/>.

unequal access to goods and services. This discrimination increasingly occurs through online business practices. For example, Facebook, Google, and other major tech companies have been sued or investigated repeatedly for discriminating in their advertisements for housing, employment, and credit.² Retail websites have been found to charge different prices based on the demographics of the user.³ Communities of color are targeted by

² Barbara Ortutay, Facebook to overhaul ad targeting to prevent discrimination, Associated Press (March 19, 2019), <https://www.apnews.com/38c0dbd8acb14e3fbc7911ea18fafd58>; Louise Matsakis, Facebook's Ad System Might be Hard-Coded for Discrimination, WIRED (April 6, 2019), <https://www.wired.com/story/facebooks-ad-system-discrimination/> (discussing new academic research showing that the platform's ad delivery algorithm engaged in discrimination even when an ad is neutrally targeted); Jeffrey Dastin, Amazon scraps secret AI recruiting tool that showed bias against women, Reuters (Oct. 9, 2018), <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G>; Upturn, Help Wanted: An Examination of Hiring Algorithms, Equity, and Bias (Dec. 2018), <https://www.upturn.org/reports/2018/hiring-algorithms/> ("Predictive hiring tools can reflect institutional and systemic biases, and removing sensitive characteristics is not a solution."); Tracy Jan and Elizabeth Dwoskin, HUD is reviewing Twitter's and Google's ad practices as part of housing discrimination probe, Wash. Post (March 28, 2019), <https://www.washingtonpost.com/business/2019/03/28/hud-charges-facebook-with-housing-discrimination/> (reporting that HUD filed a lawsuit against Facebook as well); A recent Berkeley study found that biases in "algorithmic strategic pricing" have resulted in Black and Latino borrowers paying higher interest rates on home purchase and refinance loans as compared to White and Asian borrowers. This difference costs them \$250 million to \$500 million every year. Laura Counts, Minority homebuyers face widespread statistical lending discrimination, study finds, Haas School of Business at the University of California, Berkeley, (Nov. 13, 2018), <http://newsroom.haas.berkeley.edu/minority-homebuyers-face-widespread-statistical-lending-discrimination-study-finds/>; Google's search engine used to serve users ads for payday loans when they ran searches for terms associated with financial distress, such as "I need money to pay my rent." Upturn, Led Astray: Online Lead Generation and Payday Loans, (Oct. 2015), <https://www.upturn.org/reports/2015/led-astray/>.

³ Jennifer Valentino-DeVries et al, Websites Vary Prices, Deals Based on Users' Information, WSJ (Dec. 24, 2012), <https://www.wsj.com/articles/SB10001424127887323777204578189391813881534>.

predatory and low-quality for-profit online colleges.⁴ Algorithms that set car insurance rates charge minority neighborhoods higher premiums than white neighborhoods with the same risk levels.⁵

Absent anti-discrimination protections, online businesses can refuse service on the basis of race, charge higher prices based on religion, provide subpar products based on gender or sexual orientation, or ignore the accessibility needs of people with disabilities. Public accommodations laws are meant to close these gaps.

However, because most public accommodations laws were written decades before the invention of the Internet, they do not always apply equally online and offline. AB 207 seeks to amend the state's public accommodations statute to ensure that Nevadans receive the same

⁴ Genevieve Bonadies et al, For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate, Harvard Law Review Blog (July 30, 2018), <https://blog.harvardlawreview.org/for-profit-schools-predatory-practices-and-students-of-color-a-mission-to-enroll-rather-than-educate/>; Larry Abramson, For-Profit Schools Under Fire For Targeting Veterans, NPR (Apr. 9, 2012), <https://www.npr.org/2012/04/09/150148966/for-profit-schools-under-fire-for-targeting-veterans>.

⁵ Julia Angwin et al, Minority Neighborhoods Pay Higher Car Insurance Premiums Than White Areas With the Same Risk, ProPublica (April 5, 2017), <https://www.propublica.org/article/minority-neighborhoods-higher-car-insurance-premiums-white-areas-same-risk>; Sarah Jeong, A.I. Is Changing Insurance, N.Y. Times (April 10, 2019), <https://www.nytimes.com/2019/04/10/opinion/insurance-ai.html>.

protections against discrimination from billion-dollar websites that they do in a Mom-and-Pop corner store.

Currently five states explicitly apply their public accommodations laws to the Internet: California, Colorado, New Mexico, New York, and Oregon. So, Wall Street and Silicon Valley are already covered in their home states.⁶ Our analysis shows that another 17 states have laws that are likely to apply to the Internet, but their courts have not addressed the question.

For Nevada's statute, our research shows that it is unclear whether or not the state's public accommodations law applies to online businesses.⁷ This legislation clarifies that. Passing this bill would level the playing field between online and offline commerce, requiring online businesses to meet the same non-discrimination requirements as your physical businesses and protect the rights of all your residents.

Thank you and I am happy to answer your questions.

⁶ David Brody & Sean Bickford, *Discriminatory Denial of Service: Applying State Public Accommodations Laws to Online Commerce*, Lawyers' Comm. for Civil Rts (Jan. 2020), <https://lawyerscommittee.org/wp-content/uploads/2019/12/Online-Public-Accommodations-Report.pdf>.

⁷ *Id.*