



April 15, 2024

Rep. Sarah Fowler Arthur
77 South High Street
Columbus, OH 43215
rep99@ohiohouse.gov

Rep. Roy Klopfenstein
77 South High Street
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Re: HB 238

Dear Rep. Fowler Arthur and Rep. Klopfenstein:

The Professional Certification Coalition (PCC)¹ writes regarding HB 238, which contains provisions that violate First Amendment principles.

As currently drafted, Section 4743.06 of HB 238 prohibits occupational licensing boards from adopting or providing certain continuing education courses. Although these provisions relate to content offered by the state government, the bill also would make it unlawful for a licensing board to “approve for credit, count for credit, or require completion of” continuing education courses “that promote any of [certain enumerated] concepts.” The list of prohibited concepts includes content such as recognition of implicit bias tied to sex or race.

Many occupational licensing boards require licensees to complete continuing education (“CE”) courses to renew a license, and the boards will approve for credit CE based on whether the courses meet the standards of a private certification organization or an accredited college or university. For example, the Ohio Board of Nursing explains that licensed RNs can meet the CE requirements for license renewal through “[a]cademic credit for successful completion of a course taken through an accredited educational institution, such as a college course” or “contact hours of CE completed for APRN national certification.” See <https://nursing.ohio.gov/continuing-education-and-pre-licensure/continuing-education/ce-requirements-for-renewal>.

Thus, introducing content and viewpoint-based restrictions based on concepts covered in a CE course would require a state licensing board to selectively approve or deny credit based on the content of a course that is approved by private national certification organizations and would impose content-based and viewpoint-based restrictions on private certification organizations as a condition of governmental recognition. **For the PCC, this is a direct infringement on our members’ First Amendment rights as private organizations.**

Legal challenges to the right of certification organizations to develop and define the content and requirements of their credentials have repeatedly failed. As the U.S. Court of Appeals for the Third

¹ The PCC is a nonprofit, nonpartisan association formed to address legislation that affects professional certification programs, those who hold private certification credentials, and the many constituencies that rely on professional certification. The PCC’s organizational members include non-governmental professional certification organizations, professional societies, and service providers. The PCC’s members reflect a wide spectrum of professions, including health care, engineering, financial services, and information technology, among many others. Our founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – govern the PCC.

Circuit stated in *Kenney v. Am. Board of Internal Medicine*, a certification organization “has the right to control who it is certifying and what standards and requirements are necessary.” HB 238 violates this fundamental principle.

Moreover, in a unanimous decision issued earlier this year on March 4, 2024, the U.S. Court of Appeals for the Eleventh Circuit affirmed a preliminary injunction against a Florida law, in *Honeyfund.com Inc. v. Governor, State of Fla.* The Florida statute enumerated a list of prohibited concepts very similar to the list of prohibited CE course concepts in Section 4743.06 and would have barred private entities from requiring attendance at courses or training sessions promoting those concepts. In holding that the Florida law “exceeds the bounds of the First Amendment,” the Court of Appeals wrote that “[b]y limiting its restrictions to a list of ideas designated as offensive, the Act targets speech based on its content. And by barring only speech that endorses any of those ideas, it penalizes certain viewpoints—the greatest First Amendment sin.” **For these reasons, the PCC urges that Section 4743.06 be deleted in its entirety from HB 238.** Alternatively, to ensure that Section 4743.06 is limited to governmental speech and does not interfere with private entity decisions about course content, the PCC urges amending the bill to:

- Delete “approve for credit, count for credit, or require completion of” from Section 4743.06(B), and
- Add a new provision: **“Nothing in this section shall be construed to require a private certification organization to grant or deny private certification to any individual, alter or impair any requirement in a licensure statute or regulation for an individual to hold current private certification as a condition of licensure or renewal of licensure, or withhold occupational licensing board recognition of continuing education credits earned from an accredited educational institution or that are consistent with continuing education credits awarded or recognized by a private national certifying organization that issues credentials for the occupation.”**

Thank you for your consideration of this letter. Please feel free to reach out to us using the contact information identified below.

Sincerely,



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AABC Commissioning Group
ABRET Neurodiagnostic
Credentialing & Accreditation
(ABRET)
ABSA International: the
Association for Biosafety and
Biosecurity (ABSA)
Academy for Certification of
Vision Rehabilitation &
Education Professionals
(ACVREP)
American Association of
Professional Landmen (AAPL)
American Board for
Certification in Orthotics,
Prosthetics and Pedorthics
(ABCOP)
American Board of Certification
for Gastroenterology Nurses
(ABCGN)
American Board of Foot and
Ankle Surgery (ABFAS)
American Board of Medical
Specialties (ABMS)
American Board of
Neuroscience Nursing (ABNN)
American Board of Nursing
Specialties (ABNS)
American Legal Nurse
Consultant Certification Board
(ALNCCB)
American Medical Certification
Association (AMCA)
American Nurses Credentialing
Center (ANCC)
American Payroll Association
(APA)
American Society of
Association Executives (ASAE)
American Society of Civil
Engineers (ASCE)

American Speech-Language-
Hearing Association (ASHA)
American Traffic Safety
Services Association (ATSSA)
American Translators
Association (ATA)
Arcitura Education, Inc.
Association for Financial
Counseling & Planning
Education (AFCPE)
Association of Surgical
Technologists (AST)
Behavior Analyst Certification
Board (BACB)
Beingcert
Board of
Certification/Accreditation
(BOC)
Board of Certified Safety
Professionals (BCSP)
Board of Pharmacy Specialties
(BPS)
Building Commissioning
Certification Board (BCCB)
Building Industry Consulting
Service International, Inc.
(BICSI)
Certification Board for Diabetes
Care and Education (CBDCE)
Certification Board for Music
Therapists (CBMT)
Certification Council for
Professional Dog Trainers
(CCPDT)
Certified Financial Planner
Board of Standards (CFP Board)
Certified Fund Raising
Executive International (CFRE)
CertiProf, LLC
Chartered Financial Analyst
Institute (CFA Institute)

Commission for Case Manager
Certification (CCMC)
Commission on Nurse
Certification (CNC)
Community Association
Institute (CAI)
Construction Management
Association of America
(CMAA)
Council of Engineering and
Scientific Specialty Boards
(CESB)
Dental Assisting National Board
(DANB)
Diving Equipment and
Marketing Association (DEMA)
Entertainment Services and
Technology Association (ESTA)
ETA International
Financial Planning Association
(FPA)
Healthcare Sterile Processing
Association (HSPA)
Hearth, Patio, & Barbecue
Education Foundation (HPBA)
Heuristic Solutions
Hospice and Palliative
Credentialing Center (HPCC)
Human Resource Certification
Institute, Inc. (HRCI)
Institute for Credentialing
Excellence (ICE)
Institute of Hazardous Materials
Management (IHMM)
International Coach Federation
(ICF)
International Information
System Security Certification
Consortium (ISC²)
Investments & Wealth Institute
(IWI)

Irrigation Association	National Recreation and Park Association (NRPA)
IT Certification Council (ITCC)	National Restaurant Association (NRA)
Laborers' International Union of North America Training & Education Fund (LIUNA)	National Roofing Contractors Association (NRCA)
Medical-Surgical Nursing Certification Board (MSNCB)	National Society of Professional Engineers (NSPE)
National Association of Insurance and Financial Advisors (NAIFA)	Nephrology Nursing Certification Commission (NNCC)
National Association of Personal Financial Advisors (NAPFA)	Oncology Nursing Certification Corporation (ONCC)
National Athletic Trainers' Association Board of Certification, Inc. (NATA/BOC)	Pearson Vue
National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)	Pediatric Nursing Certification Board (PNCB)
National Board of Certification in Hearing Instrument Sciences (NBC-HIS)	Pharmacy Technician Certification Board (PTCB)
National Board of Certification in Occupational Therapy (NBCOT)	Professional Association of Therapeutic Horsemanship International (PATH)
National Board of Public Health Examiners (NBPHE)	PSI Services
National Board of Surgical Technology and Surgical Assisting (NBSTSA)	QualityPro
National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)	Rehabilitation Nursing Certification Board (RNCB)
National Certification Corporation (NCC)	School Nutrition Association (SNA)
National Commission for Health Education Credentialing (NCHEC)	SeaCrest Consulting
National Commission on Certification of Physician Assistants (NCCPA)	Security Industry Association (SIA)
National Council on Family Relations (NCFR)	Society of Broadcast Engineers (SBE)
National Kitchen and Bath Association (NKBA)	Specialty Pharmacy Certification Board (SPCB)
	Spray Polyurethane Foam Alliance (SPFA)
	Towing and Recovery Association of America, Inc. (TRA)