2011 SENATE JUDICIARY

SB 2052

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2052
1/5/11
Job #12592

☐ Conference Committee

Committee Clerk Signature Blake Davis

Explanation or reason for introduction of bill/resolution:

Relating to an enhanced penalty for conviction of criminal mischief involving a hate crime.

Minutes: There is attached testimony

Senator Nething – Chairman

Senator Nething opens the hearing on SB2052

Jeff Nelson – Staff Attorney for Legislative Council – Introduces the bill and explains the changes this bill will make in the Century Code.

Senator Olafson – Asks for a dollar amount, says the new section has no dollar parameters. He asks if it is a Class C felony without respect to a dollar amount in damage.

Nelson – responds yes.

Senator Lyson – Asks if the crime was committed by a Native American on his property it would be by the amount of monies it would take to repair the damages. Because the person is in a protected group he can commit a crime against me and not get a severe punishment but if I if I commit a crime against his property I would get a more severe punishment.

Nelson – Believes that is not a fair characterization. He states that it is elevated to a Class C felony if the actor's conduct shows bias. It doesn't matter the status or the class of the actor. It matters if the conduct shows bias.

Senator Lyson – Relates to him it appears that being a citizen of ND and not in a protected class is treated just as a citizen of ND. He believes this bill just doesn't fit. The courts have set a punishment for crimes committed. We have given the courts lea ways.

Nelson – Gives an example of a hate crime.

Senator Nelson – Asks for a review of the actual case this bill is based on.

Nelson – Gives his recollection of the crime in the park in Bismarck.

Senator Nelson – Asks why it would be any different if someone vandalized a statue on the Capitol grounds.

Nelson – Thinks why it is different may be a policy question for the Senate. The Tribal committee says its different because of the evidence at the scene was more than criminal mischief; it was communicated bias towards the protected class.

Senator Sorvaag – He states that other statues damaged, such military statues, because they are not in a protected class is saying it is not hate crime even though there are slurs on the statue.

Nelson – States that is absolutely correct. These groups are protected classes, in Senator Sorvaag's scenario the military is not.

Senator Sorvaag – Asks who determines if it is biased vandalism.

Nelson – States ultimately it would judge and jury to determine.

Senator Nelson – Asks if for example a Norwegian statue in Fargo is vandalized it would be covered.

Nelson – Yes, national origin is a protected class.

In Favor of the Bill

Pam Mack – Protection and Agency – see written testimony. Same as on bill 2051.

Senator Olafson – Asks why she would support this bill about property damage.

Mack – Says her testimony is specific to the protected class of disability. Because there are many discriminatory practices they are in favor of including that in the protected classes covered by the bill.

Opposed to the bill

Yanna Myrdal – See written testimony

Reed Soderstrom – See written testimony

Tom Freier – See written testimony

John Emter – Does not want to see more laws. He wants more honesty. He talks of the hate in this country. He believes alcohol and drugs are the biggest abuser of these crimes.

Senator Nething closes the hearing on 2052.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2052
1/26/11
No record

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to an enhanced penalty for conviction of criminal mischief involving a hate crime

Minutes: Attachment

Senator Nething – Chairman

Committee discussion
Senator Nelson brings in a hog house amendment – See attachment
Senator Lyson and Senator Olafson says they cannot support the bill.

Senator Nelson motions to move the amendment
Roll call vote – 2 yes, 4 no
Amendment fails

Senator Sitte moves a do not pass
Senator Sorvaag seconds

Discussion
Senator Nelson doesn't like it un-amended but thinks it's still better than what is currently there.
Senator Olafson says it bothers him that the penalty is Class C felony if you have $5 worth of damage just based on motivation.

Roll call vote – 5 yes, 1 no

Senator Olafson will carry

Prepared by the Legislative Council staff for
Senator Nelson
January 11, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2052

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 12.1-32-04 of the North Dakota Century Code, relating to factors to be considered in sentencing decisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-32-04 of the North Dakota Century Code is created and enacted as follows:

The defendant's conduct showed bias based on race, color, religion, sex, sexual orientation, disability, age, or national origin. For purposes of this subsection, disability means a condition or characteristic that renders an individual a disabled individual. A disabled individual is an individual who has a physical, sensory, or mental impairment that materially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment."

Renumber accordingly

Date: 1/26/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2052

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S Nelson Seconded By S Nething

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson – V. Chairman		X			
Stanley Lyson		X			
Margaret Sitte		X			
Ronald Sorvaag		X			

Total (Yes) 2 No 4

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1/26/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2052

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Sitte Seconded By S. Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		**Carolyn Nelson**		X
Curtis Olafson – V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 5 No 1

Absent _____

Floor Assignment S. Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2052: Judiciary Committee (Sen. Nething, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2052 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2052

Senate Judiciary Committee
Sixty-Second Legislative Assembly of North Dakota
Senate Bill No. 2052
January 5, 2011

Greetings, Chairman Nething and Members of the Senate Judiciary Committee: I am Pam Mack, testifying for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect persons with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of persons with disabilities. My testimony solely addresses the bill's effects on persons with disabilities.

Historically, persons with disabilities have been treated as second-class citizens, hidden and excluded from society. Bias against persons with disabilities manifests itself in many ways. One of the worst manifestations is criminal acts against persons with disabilities.

Persons with disabilities have a significantly higher likelihood of becoming victims of crimes than do others. Some people estimate that persons with disabilities are four to ten times more likely to become victims of crime. This is especially alarming because persons with some disabilities are especially vulnerable.

Two examples are (i) a malicious person might easily exploit a person with a cognitive impairment and the victim might not even understand that a crime has occurred; (ii) a hateful person might easily injure a person who is

physically frail from a disability, by applying only the slightest force. It is easy to picture many other situations in which a person with a disability is especially vulnerable.

A small number of offenders are motivated by prejudice or hatred toward persons with disabilities or toward persons with a specific kind of disability. They might harass, intimidate, or commit violent acts against individuals with disabilities. By far, most of these crimes go unreported.

Approximately thirty states have hate crime laws that specifically address offenses motivated by disability bias. Public policy values all persons, including persons with disabilities. Persons with disabilities in North Dakota should receive the same protections as are already afforded to persons based on race, color, religion, and national origin. This bill would improve rights protection for persons with disabilities in North Dakota.

The bill's definition of disability is very similar to the definition of disability in North Dakota's Human Rights Act and in the Americans with Disabilities Act. The major difference is the term "materially" appears in the bill where "substantially" appears in the two other definitions. I understand "disability" would mean the same in these statutes as in the other laws. It is best for "disability" to have the same meaning in the Human Rights Act, the ADA, and these proposed criminal statutes.

The North Dakota Protection & Advocacy Project supports Senate Bill 2051 and encourages you to make a "do pass" recommendation to the full Senate. Thank you. Please let me know if you have any questions.

Myrdal
Director

CWA Testimony on SB2051 & 2052

Mr. Chairman and members of the committee, my name is Janne Myrdal, and I am the State Director for Concerned Women for America (CWA) of North Dakota. CWA is the largest public policy women's organization in the nation with more than 500,000 members. We are here today in opposition to SB2051.

We strongly object to the terms "hate crimes" and "sexual orientation" being added to the North Dakota Century Code, which is the intent of SB2051. Special rights have historically been afforded to certain groups in order to ensure that individuals are not discriminated against due to *immutable* characteristics. North Dakota law already protects these characteristics. "Hate crimes" and "sexual orientation" are terms that are ambiguous at best and open the door of the judiciary to be subjected to an imbalanced and subjective process.

We assert that all crimes, including crimes committed towards anyone of any kind of sexual lifestyle, already receive the full penalty under current North Dakota law. We should not allow double jeopardy to take effect due to the victim's sexual lifestyle. In doing so, the doors open to an unstable and ambiguous process of law that can run amok with subjective rulings based on prejudice, not law.

The 14th Amendment of the U.S. Constitution affords equal protection to every citizen under the law. SB2051 would create law that treats victims differently based on their class. Such laws do ***not*** equally protect all citizens. They create new "classes" of victims instead of treating all citizens as equal. This slippery slope has no legal end and cannot sustain equal justice for all.

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

P.O. Box 213 Park River, ND 58270-0213 Phone: (701) 331-0946

In a country and state where freedom is cherished, expression concerning social, political or religious issues should not be considered as assault, hate or violence. This bill will not only cause stifling of free speech, but has the possibility and intent at times to halt various forms of peaceful conduct, should someone find it "hateful."

In general, "hate crimes" laws give the government, judges and bureaucrats the opportunity to interpret and classify speech and thoughts as unlawful. It gives penalties based on what people think, feel or believe. That is a direct assault on the Constitution itself and the common sense, strength of character and founding principles upon which this great nation and state were built. It will lead to chaos in the courts which, of course, comes at a high cost to taxpayers. Possibilities of frivolous civil law suits will be endless and costly.

Further, those "class" privileges under the "sexual orientation" definition would have a significant impact on the constitutional rights of North Dakotans who may have a moral objection to certain sexual behavior. Both federal and North Dakota law already prohibits sex discrimination and sexual harassment. If SB 2051 becomes law, it will communicate to the citizens of North Dakota that the political agenda of a few is more important than the time-honored and cherished First Amendment principles upon which our country was founded and promised to everyone. The liberties we now **all** enjoy, regardless of sexual preferences, will all stand defenseless against this discriminatory proposed law.

Allow us also to state that it should be the personal duty of all citizens to behave in a respectful manner towards our fellow citizens, **without being compelled or directed by law**, so as to afford all the right to life, liberty, pursuit of happiness, as well as freedom of speech. We should all strive to behave so.

One of the tragedies of legislation like we see introduced here today is the fact that while well meaning and under the assumption of progress and empathy, this law actually disrespects the core of humanity itself and ends up robbing us of the freedoms so clearly protected by the Constitution.

We, again, urge your "Do Not Pass" vote on SB2051. Your consideration of this request is appreciated.

While the intent-based evaluation for murder examines *intent* and treats all criminals *equally*, "hate crimes" laws require an evaluation of a criminal's *thoughts* and treats victims *differently* based on their identity. According to the FBI's annual report on "hate crimes," identifying feelings is beyond law enforcement's ability and jurisdiction. The determination of thoughts and feelings involves enormous possibility of error. To maintain order and justice, government must judge actions — not feelings.

All "hate crimes" laws attempt to read people's thoughts, motives and attitudes violating Freedom of Speech by silencing and punishing all opposing viewpoints. According to some experts in the law some jurisdictions have defined as "hate" not just violent physical acts but verbal acts as well; in fact, most so-called "hate crimes" are intimidation and name-calling rather than physical acts of violence. The FBI statistics show that there were only 5,190 hate crimes reported in 2005; of these 301 were listed as intimidation; 333 were listed as "assault"; 177 were listed as aggravated assault compared to national statistics that show there were 862,947 aggravated assaults against all persons in the U.S. This is 0.000205 percent of all aggravated assaults. [FBI Crime in the United States 2005, Aggravated Assault]

A crime is a crime...there should be no elite groups, creating a hierarchy of victims.

"Hate crimes" laws also grant more government protection to certain classes of people, violating the Equal Protection clause of the U.S. Constitution "Hate crimes" laws create different classes of victims, giving priority to those who define themselves under the non-traditional "sexual orientation" term. (It should be noted that according to the therapeutic manual of the American Psychiatric Association, there are at least 20 distinctive sexual variations of "sexual orientation.")

Another aspect of SB2051 is that "hate crimes" laws include the dangerous aspect of criminalizing thoughts rather than actions. This becomes a direct attack on the First Amendment rights to free speech. SB 2051 expands and redefines North Dakota Century code in overly broad language that could lead to very subjective interpretations. Under this bill, individuals could claim, and courts interpret, that merely expressing one's sincerely held beliefs is "intimidating" or represent a "threat" of force.

(3)

MEMORANDUM

TO: Senate Judiciary Committee

RE: *Proposed "Hate Crimes" Legislation*
Bills ~~10021.0400 & 10162.0100~~ 2051 & 2052
Amendments to NDCC 12.1-21-05 and 12.1-14-04

FROM: Reed A. Soderstrom, Esq.

DATE: January 5, 2011

The amendments proposed in bills 10021.0400 and 10162.0100 are not necessary as the crimes contained in the original legislation are already punished under law. Thus, the only thing added by the proposed amendments to sections 12.1-14-04 and 12.1-21-05 of the North Dakota Century Code is punishment for what a person thinks, feels, or believes.

The enactment of "hate crime" laws attempt to enforce political correctness. The heavy hammer of the state's criminal code to enforce this new North Dakota model of political correctness, and proposing additional punishments to those who do not embrace this new political correctness is unacceptable and violates our state's constitution.

While the proposed legislation at issue does not employ the actual term "gender identity", the legislation seeks to incorporate the notion of a person's "gender identity" into North Dakota law by employing the conceptual language of a person's "actual or perceived.....sex". The term "sexual orientation" is used in NDCC 14-02.5-01, but it is not defined and only exists to confirm that the state's definition of "disability" in its housing laws **does not include** anyone's notion of "sexual orientation." Thus, there does not exist within the North Dakota Century Code any form of express protection for, or recognition of, the concept of "sexual orientation".

Traditional protected categories—such as race, nationality, and sex—are innate, immutable characteristics, which cannot be altered or changed in an instant. In contrast, "sexual orientation" is an ever-fluid concept based on one's behavioral preference.

Since everyone possesses some sort of "sexual orientation," nothing will prevent individuals from alleging "sexual orientation" discrimination claims in order to subject one convicted of a crime to greater punishment than should be had under the law. Any spurned victim of criminal activity can make claims that can be neither confirmed nor disproven. Moreover, because the proposed laws purport to protect individuals on the basis of their (the victim's) perceived "sexual orientation," any defendant will be placed in the nearly impossible position of proving what the victim did and did not perceive regarding their sexual behavior.

North Dakota is certainly not the first state to consider adding provisions for "sexual orientation" and "gender identity" to its already existing "hate crimes" legislation. Twelve states

and the District of Columbia already possess such legislation.[1] "Hate crimes" laws are traditionally used as a mere starting point for advancing a social and political agenda that North Dakotans do not embrace. These bills are part of a much larger National Gay Agenda.

The United States Supreme Court has repeatedly declared that a state court's application of the sexual-orientation nondiscrimination law has violated the constitutional free-speech rights, including those of parade organizers, the Boy Scouts of America, and owners and associations of private property. The fact is that the excessive and unnecessary expansion of nondiscrimination laws has emerged as a "serious threat" to constitutional rights and our nation's timeless civil liberties. Lawyers across the country are actively defending against efforts to impose upon sincere people of faith this new political correctness of "sexual orientation" and "gender identity." In one case, a small photography company in New Mexico was fined by that State's human rights commission for refusing to photograph a civil union "commitment ceremony."[2] The fine was imposed even though civil unions are not legal in New Mexico and photographing such a ceremony was in direct opposition to the photographer's sincere religious beliefs.

Similarly, in New Jersey, the Ocean Grove Camp Meeting Association recently sued the New Jersey Division on Civil Rights for threatening to prosecute the Association. The Association's "crime" was to abide by its religious beliefs not to allow civil union ceremonies to be conducted on its private property.[3]

These instances illustrate what is happening now to people of faith who choose to abide by their deeply held and sincere religious beliefs in the face of state mandates to compromise their faith. Expanding North Dakota's existing criminal law to protect "hate crimes" against actual or perceived "sexual orientation" or "gender identity" will have a similar impact on people of faith as these situations illustrated above. While nobody is advocating in support of crime or violence, the real issue behind the "hate crimes" law is its punishment of thought and belief and the imposition of a political correctness on people of faith.

Passing the proposed legislation will elevate "sexual orientation" and "gender identity" to a newly protected class under North Dakota law. The legitimate concern that many have regarding the creation of this expanded "hate crime" law is that it may ultimately be used to punish the public expression of religious beliefs. True, the currently proposed legislation makes only criminal activity an offense. However, given the agenda outlined above, there is a legitimate concern that once this legislative body makes anything a "hate crime," the categories of crime will also expand to include speech that causes someone to "feel" intimidated, just as they have in other places such as Australia, Canada, and Sweden.[4]

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[1] *See* http://www.hrc.org/documents/hate_crime_laws.pdf.

[2] *See* ADF to appeal N.M. commission's ruling against Christian photographer, *available at* http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4467.

[3] *See* N.J. ministry sues to prevent state from forcing church to violate its religious beliefs, *available at* http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4206.

[4] In Australia, two men were prosecuted for a "hate crime" because they held a seminar to educate Christians about Muslim beliefs. "Landmark Ruling Puts Freedom of Speech in Focus," Christianity Today, December 1, 2004 (*see* www.ctlibrary.com/ct/2004/decemberweb-only/12-20-33.0.html). In Canada, multiple persons have been convicted under a law criminalizing as "hate propaganda" any speech that is critical of homosexual behavior. However, extreme hostility toward religious objections to homosexual behavior are

In a zealous effort to enforce these new laws, if enacted, a prosecutor or a court may attempt to introduce evidence of a defendant's beliefs, associations, religious attendance, or other similar evidence in order to prove that a crime was committed because of a person's protected status under the law.

The Maine Human Rights Commission just recently held that a middle school had violated the state's "gender identity" law by refusing to allow a sixth-grade "transgender" boy to use the girl's restrooms.[5]

The slippery slope associated with incorporating "gender identity" provisions into North Dakota law is unsettling.

I urge you to vote against these bills and protect the First Amendment rights of all. The types of circumstances seen in other states and countries that have passed "hate crimes" laws are inconsistent with America's rich tradition of freedom of conscience and expression. Proposed Bills ~~10021.0400 & 10162.0100~~ are inconsistent with those traditions and should not be passed out of this committee.

2051 & 2052

permissible. *See* Kevin Bourassa and Joe Varnell, "Purging Toxic Religion in Canada: Gay Marriage Exposes Faith-Based Bigotry," January 18, 2005 (*see* http://www.samesexmarriage.ca/equality/toxic180105.htm). And in Sweden a pastor was convicted by a trial court and sentenced to jail time for a hate crime after preaching a sermon in which he spoke of the obligation of Christians to love persons involved in the sexual immorality of homosexual behavior. "Swedish Minister Jailed for 'Anti-Gay' Speech," Catholic World News, July 6, 2004. The pastor was ultimately exonerated by the Swedish Supreme Court, but only after an extensive appeal process. (*See* http://www.alliancedefensefund.org/news/story.aspx?cid=3606.)

[5] *See* http://www.foxnews.com/us/2010/04/08/maine-commission-moves-ban-gender-specific-school-bathrooms-teams/.

2051-(6)

Tom D. Freier, EXECUTIVE DIRECTOR

(4)

Senate Judiciary Committee
January 5, 2011
SB 2051

Mr. Chairman and members of the Senate Judiciary Committee, I am Tom Freier representing the North Dakota Family Alliance. I am here in opposition to SB 2051.

This bill seeks to enhance penalties for conviction of discrimination in public places, aggravated assault, and harassment involving a hate crime. Among the criteria for these greater penalties qualifying for a hate crime is one's actual or perceived sexual orientation. This definition is subjective and vague.

Criteria to determine discrimination needs to be objective. The US Supreme Court has determined qualified criteria to be immutable, unchangeable, like skin color. And as such, sexual orientation should not qualify as a protected class.

Supporters of a bill like this might think it is primarily about protecting someone from violence, harassment, or discrimination, a hate crime, including those of an actual or perceived sexual orientation. After all when we hear the words "hate crimes", who wouldn't want to enhance the penalties?

But we should understand that all necessary laws already are in place to protect everyone, including those specifically named in this bill. Even a strong supporter of hate crimes legislation, Andrew Sullivan recently commented, "The real reason for hate crime laws is not the defense of human beings from crime. There are already laws against that—and Matthew Shepard's murderers were successfully prosecuted to the fullest extent of the law in a state with no, hate crimes law at the time."

So why pass "hate crimes" legislation including the 'sexual orientation' criteria, if unnecessary? It can only have to do with enshrining "sexual orientation" as an identity worthy of special status protection.

North Dakota is certainly not the first state to consider adding provisions for "sexual orientation" to its already existing "hate crimes" legislation. Twelve states and the District of Columbia already possess such legislation.[1] It is, however, important to understand how "hate crimes" laws are traditionally used as a mere starting point for advancing a social and political agenda that North Dakotans do not embrace.

As an example, the progression of this agenda within Vermont is revealing. In 1990, Vermont enacted into law its Hate Motivated Crimes Statute.[2] This act was much like the one currently before you. Only two short years later, in 1992, Vermont enacted a "sexual orientation" nondiscrimination act (covering employment, labor organizations, public accommodation, housing and a variety of other areas).[3]

In 1994, Vermont added "sexual orientation" to its school harassment and discrimination prohibition law.[4] Also in 1994, Vermont became the first state to extend health benefits for the domestic partners of state employees.[5] In 1996, Vermont altered its adoption laws so that "any person may adopt or be adopted by another person for the purpose of creating the relationship of parent and child between them."[6]

In 1999, Vermont added "gender identity" to its Hate Motivated Crimes Statute,[7] and then in 2000, Vermont was the first state in the country to create "civil unions."[8] In 2007, Vermont added "gender identity" to its nondiscrimination laws, including school harassment laws.[9] In 2009, Vermont legislatively enacted same-sex "marriage."[10]

All of what occurred in Vermont began with the enactment of "hate" crimes legislation like that proposed in bills SB 2051 and SB 2052. Moreover, similar and nearly identical patterns of progression regarding this strategy can be seen in, *e.g.*, New Jersey, Connecticut, California, New York, Washington, Maine, New Hampshire, Pennsylvania, and other states. While it is unlikely that North Dakota will follow the same exact pattern of Vermont and other states, it is important to understand the agenda that North Dakota is being asked to embrace.

Furthermore, of the many constitutional protections contained in the First Amendment, the free exercise of religion is perhaps the most revered of all. Let me share a real possibility with the passage of this hate crime legislation.

Introduction of evidence can take several forms, including a prosecutor calling a pastor to testify as to what he or she preaches, or what his or her church believes, about gender or sexual

behavior. In addition, in North Dakota, prosecutors are routinely given great leeway in the scope of impeachment of a defendant on cross-examination. Therefore, it is likely that a great deal of evidence of a defendant's statements, associations, and support of organizations could be presented to a jury in connection with a prosecution under the proposed laws. Should a pastor be called to testify in connection with a "hate crimes" prosecution, the pastor, and other churches and pastors who hear about it, may feel compelled to censor themselves or to chill their own speech and simply stay away from any discussion or teaching of what Scripture says a gender or sexual behavior, and this is a legitimate concern for churches and organizations that hold peaceful and sincere religious beliefs regarding these topics.

Additionally, virtually everywhere that hate crimes laws have been enacted, "hate speech" regulations follow. This is not surprising, considering the fact that "hate crimes" are enacted solely to send a governmental message of disapproval of certain beliefs. For example, the sole difference between an assault that is already a crime under the criminal law and an assault classified as a "hate crime" is the alleged belief of the perpetrator of the crime. Because an assault is already criminalized, enacting a "hate crimes" law only serves the added purpose of trying to send a message of governmental disapproval of the purported beliefs of the perpetrator.

In practice, hate crimes laws have been used to prosecute and silence people of faith who genuinely and peacefully express sincerely held views regarding gender and sexual behavior. Similar laws in this country that elevate "sexual orientation" to a protected status are being used to silence and punish many, and the passage of these proposed pieces of legislation will contribute to this environment within North Dakota, leading to censorship and fear among people of faith.

And so I respectfully ask the committee to oppose this bill with a Do Not Pass.