

2009 SENATE JUDICIARY

SB 2278

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2278

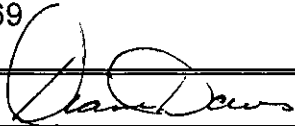
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/3/09

Recorder Job Number: 8469

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to discrimination on the basis of sexual orientation

**Senator Fiebiger** – District 45 – Introduces this bill – Gives a very moving introduction. He then explains the sections of the bill that will cover changes.

**Senator Olafson** – Asks, you said you have fielded calls because of people that have lost their jobs. Have you research if there is anything in the federal statutes that would provide the kind of protection that your seeking with this bill.

**Senator Fiebiger** – They are working on federal legislation but at this point there is not any federal legislation.

**Representative Kathy Hawken** – District 46 – Talks of the bill she co-sponsored. She said in a perfect world there would be no need for protected classes. She mentions having had direct dealings with discrimination when she was the acting athletic director for Fargo Public Schools. She said it was a tremendous eye opener for her dealing with mostly men. She also mentions it often happens here, in the ND State Legislature. She said one's feelings get a little tougher, but it shouldn't have to be that way. She can't imagine losing a job or leaving a residence because of discrimination.

**Senator JoNell Bakke** – District 43 – Sponsor of the Bill – Talks of the civil rights of these people. Time to look within ourselves.

**Representative Cory Mock** – District 42 – Sponsor of the Bill – He says about 10% of our population would be affected by this group. He said to think back to other groups that may fall into a minority of about 10%. In ND he says the non-white population is about 10% and can you imagine if you were anything other than Caucasian in fear of losing your job or being denied loans. He said in this day and age it is time to treat people as humans and not by labels.

**Mitch Mar** – Executive Director Human Rights Coalition – See written testimony. He talks of core values and families. It is a bill that values all North Dakotans.

**Amy Nelson** – Executive Director Fair Housing of the Dakotas – See written testimony.

She speaks of complaints they have received because of sexual orientation. She said ND used to be ahead in Fair Housing. Minnesota, Montana already have such laws. Fair Housing is in support of this bill.

**Gina Powers** – See written testimony – She talks of her family headed by two women. This impacts all of us in ND. She would like to see us merge as a better state. Time to put an end to discrimination in ND.

**Sherri Paxon** – See written testimony – She speaks of the bullying that she suffered at work and finally had to resign her position.

**Senator Nething** – Asks her about her employment and what could have been done differently.

**Paxon** – Feels it would have been better with this bill. She pursued what legal recourse she could going through Job Service of ND. When they had the hearing there was no legal basis for her claim and she couldn't prove her case. Had her supervisors new that the law was in

effect, maybe they wouldn't have harassed her and maybe would have had a better understanding of her life.

**Wade Schemmel** – Conference Minister, United Church of Christ – See written testimony.

Supports this bill.

**Lola Huwe** – See written testimony – Speaks of her family, would like all her children to have the same rights.

Opposition

**Tom Freier** – See written testimony – Wants no ill will to anyone and respect for each other's views.

**Senator Schneider** – Asks what is adverse discrimination.

**Freier** – Thinks if people were put in groups it would be adverse to the larger group.

**Senator Olafson** – Ask if he can point to any sections of ND Century Code or any federal law which may provide the protections that this bill seeks to put in place.

**Freier** – He believes that all sections that deal with employment in general and the protection of that employment is also afforded to all of us. He doesn't want to see a special status established.

**Senator Nething** – Recognizes it is pretty objective to talk of race, color, origin, age, religion, it now includes mental disability. He asks if it wouldn't be just as hard to determine as sexual orientation would be.

**Freier** – He responds that medical folks could share information to shed some light on it to determine that.

**Senator Nething** – Asks if that wouldn't also hold true for sexual orientation.

**Freier**- He said he would go back to the definition and the perceived wording in it.

**Senator Nething** – Has questions on the insurance area and jury duty area.

**Freier** – He said he doesn't believe people have been discriminated against in that arena, he hasn't heard of it.

**Janne Myrdal** – State Director for Concerned Women for America of ND – See written testimony.

**Christopher Dodson**, Executive Director of ND Catholic Conference – See written testimony.

**Reed Soderstrom** – Attorney – He believes this bill provides a solution where no problem exists. He then describes the damage this bill could do. He says there are those that do not want to separate their faith from their business. He says we already have laws that will remedy people that have been hurt.

#### **Neutral**

**Lisa Fair McEvers, Commissioner of Labor** – See written testimony – Training the staff is important for a new protected category. Her case load is increasing in the area of human rights. She says the addition of this protected class would not have an adverse effect on her department. If they get the FTE they could absorb the additional duties into the department.

**Senator Nething** – Asks her to walk through the steps when a complaint has been filed.

**McEvers** – Walks through their procedures for a complaint. This is not a Federal complaint, it would be a state complaint so there would be no HUD funding. She continues to explain her process.

**Senator Nething** – Asks her about dual filing.

**McEvers** – Her department files it under State and Federal law. In the area of human rights, they investigate under four areas, public service, public accommodation, housing, employment.

Within those 4 areas there are protected categories, such as race, color, nation origin, religion, sex, age, mental or physical disability, marital status, and receipt of public assistance.

Employment has an additional category for lawful activity off the employer's premises during non working hours. Housing has one more category, familial status. She details where this new protected category would fall under.

**Larry Maslowski** – Senior Analyst and Division Director of the Property and Casualty Unit of the ND Insurance Dept. – See written testimony – provides proposed amendments for insurance. He said they haven't had time to study this bill to see where problems may be.

Close the hearing on 2278

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2278

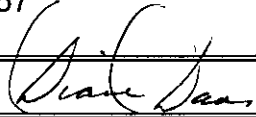
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/11/09

Recorder Job Number: 9157

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

**Senator Nething** discusses a proposed amendment that he has brought for 2278. He said this amendment brings the statute ND law into line with House Concurrent Resolution 2015 which has passed the Congress. His thought is if we are going to have this as law the Federal law would be a good model to follow. The amendments do not change the bill very much, it adds one exception that wasn't there and that is the religious organizations associations or a non-profit institution organization. He asks for the committee to review for purpose of discussion on Monday afternoon.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2278

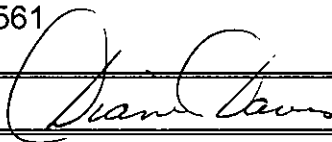
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/16/09

Recorder Job Number: 9561

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Senator Fiebiger put together some proposed amendments. He explains they are a combination of what Senator Nething also proposed. The committee goes through the amendment line by line. Senator Fiebiger discusses some of the e-mails he has received and he believes that this amendment covers most of them. Senator Nething mentions the amendments that Larry Maslowski of the Department of Insurance had proposed. They decide to combine them with this amendment. Senator Olafson asks Senator Fiebiger to address gender identity and how that relates to the amendment. He has concerns particularly in the work place. How may an employer protect themselves? Senator Fiebiger explains where in the amendment he can find it, that would alleviate those concerns. Senator Olafson asks if this puts the burden of proof on the employer. Senator Fiebiger says they really have the protection of the state that they didn't have. Senator Olafson mentions that ND is an "at will" employment state so doesn't think this will change that much.

**Senator Fiebiger** moves the amendment

**Senator Nelson** seconds

Vote – 6-0



**Senator Fiebiger** moves do pass as amended

**Senator Nelson** seconds

Vote – 6-0

**Senator Fiebiger** will carry

PROPOSED AMENDMENTS TO SENATE BILL NO. 2278

Page 5, line 3, after the second boldfaced period insert:

"1."

Page 5, line 10, after the period insert:

"2."

Page 5, line 13, after the period insert:

"3."

Page 5, after line 19, insert:

"4. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting employment for religious positions to individuals who are of the same religion or who adhere to the religion's practices or giving preference to individuals of the same religion or religious practices. This chapter does not prohibit a religious organization from limiting employment for other positions associated with the nonprofit activities of the entity to individuals who are of the same religion or who adhere to the religion's practices or giving preference to individuals of the same religion or religious practices, unless membership in the religion is restricted because of race, color, or national origin."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2278

Page 3, line 19, after "10." insert "Gender identity" means actual or perceived gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated gender at birth.

11."

Page 3, line 23, overstrike "11." and insert immediately thereafter "12."

Page 3, line 25, overstrike "12." and insert immediately thereafter "13."

Page 3, line 27, overstrike "13." and insert immediately thereafter "14."

Page 4, line 1, overstrike "14." and insert immediately thereafter "15."

Page 4, line 9, overstrike "15." and insert immediately thereafter "16."

Page 4, line 12, overstrike "16." and insert immediately thereafter "17."

Page 4, line 15, overstrike "17." and insert immediately thereafter "18."

Page 4, line 23, overstrike "18." and insert immediately thereafter "19."

Page 4, line 25, overstrike "19." and insert immediately thereafter "20."

Page 4, line 26, remove "or expression"

Page 4, line 27, replace "20." with "21."

Page 5, line 3, after the second boldfaced period insert:

1."

Page 5, line 10, after the period insert:

2."

Page 5, line 13, after the period insert:

3."

Page 5, after line 19, insert:

4. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting employment for religious positions to individuals who are of the same religion or who adhere to the religion's practices or giving preference to individuals of the same religion or religious practices. This

chapter does not prohibit a religious organization from limiting employment for other positions associated with the nonprofit activities of the entity to individuals who are of the same religion or who adhere to the religion's practices or giving preference to individuals of the same religion or religious practices, unless membership in the religion is restricted because of race, color, or national origin."

Renumber accordingly

Date: 2/14/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 2278  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

*Amendments*

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen Fiebiger Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 4/14/09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Flebiger Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Flebiger	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent \_\_\_\_\_

Floor Assignment Sen. Flebiger

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

**REPORT OF STANDING COMMITTEE**

**SB 2278: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2278 was placed on the Sixth order on the calendar.

Page 1, line 2, after the third comma insert "14-02.4-08,"

Page 1, line 4, after the first comma insert "subsection 11 of section 26.1-04-03, subsection 1 of section 26.1-30.1-01.1, subsection 1 of section 26.1-39-17, and sections"

Page 3, line 19, after "10." insert "Gender identity" means actual or perceived gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, regardless of the individual's designated gender at birth.

11."

Page 3, line 23, overstrike "11." and insert immediately thereafter "12."

Page 3, line 25, overstrike "12." and insert immediately thereafter "13."

Page 3, line 27, overstrike "13." and insert immediately thereafter "14."

Page 4, line 1, overstrike "14." and insert immediately thereafter "15."

Page 4, line 9, overstrike "15." and insert immediately thereafter "16."

Page 4, line 12, overstrike "16." and insert immediately thereafter "17."

Page 4, line 15, overstrike "17." and insert immediately thereafter "18."

Page 4, line 23, overstrike "18." and insert immediately thereafter "19."

Page 4, line 25, overstrike "19." and insert immediately thereafter "20."

Page 4, line 26, remove "or expression"

Page 4, line 27, replace "20." with "21."

Page 5, line 3, after the second boldfaced period insert:

"1."

Page 5, line 10, after the period insert:

"2."

Page 5, line 13, after the period insert:

"3."

Page 5, after line 19, insert:

"4. a. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization,

association, or society from establishing any qualifications or hiring criteria for employees and volunteers in religious positions.

- b. This chapter does not prohibit a religious organization, association, or society from limiting employment and volunteers in nonreligious positions to individuals who are of the same religion or who adhere to the religion's tenets unless membership is restricted because of race, color, or national origin.
- c. This chapter does not prohibit a religious organization, association, or society from limiting access or admission to its places of worship or its parochial schools to individuals of the same religion or who adhere to the religion's tenets."

Page 6, after line 15, insert:

**"SECTION 7. AMENDMENT.** Section 14-02.4-08 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-08. Qualification based on religion, sex, national origin, physical or mental disability, or marital status.** Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental disability, sexual orientation, or marital status in those circumstances ~~where~~ in which religion, sex, national origin, physical or mental disability, sexual orientation, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, or to discharge an individual from a position on the basis of that individual's participation in a lawful activity that is off the employer's premises and that takes place during nonworking hours and which is not in direct conflict with the essential business-related interests of the employer, if that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer."

Page 11, after line 6, insert:

**"SECTION 20. AMENDMENT.** Subsection 11 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

11. Refusing to insure risks. Refusing to insure risks solely because of race, color, creed, sex, sexual orientation, or national origin, or refusing to continue to insure risks solely because an employer chooses to offer a health maintenance organization option to employees in its health benefit plan.

**SECTION 21. AMENDMENT.** Subsection 1 of section 26.1-30.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The race, religion, nationality, ethnic group, disability, age, sex, sexual orientation, or marital status of the applicant or named insured, except this subsection does not prohibit rating differentials based upon age, sex, or marital status.



**SECTION 22. AMENDMENT.** Subsection 1 of section 26.1-39-17 of the North Dakota Century Code is amended and reenacted as follows:

1. The race, religion, nationality, ethnic group, age, sex, sexual orientation, or marital status of the applicant or named insured."

Renumber accordingly

2009 HOUSE HUMAN SERVICES

SB 2278

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2278

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 18, 2009

Recorder Job Number: ~~11209~~

*Should be  
11204*

Committee Clerk Signature

*Licky Crabtree*

Minutes:

**Chairman Weisz opened the hearing on 2278.** So everyone understands, I will give one hour for support and one hour for opposition to the bill. Molissa and Ellen, raise your hands please, will take any testimony you have and hand it out to the committee members and clerk.

Thank you.

**Sen. Fiebiger sponsored and introduced the bill: See Testimony #1.**

**Sen. Conrad:** Could you address the bathrooms?

**Sen. Fiebiger:** We need to remember like everyone else transgender people need to use bathroom facilities with safety and dignity. Actually this law would prevent people being forced to use bathrooms (coughing in background so inaudible) for gender identity. Some places have unisex bathrooms. Transgenders have been victims of assault more than general public. I think it is about access and providing access. Don't think this will be a significant issue with this legislation.

**Rep. Porter:** I was wondering a couple of different issues. Number one, in regards to the rental, how is that line drawn in the sand? Six, eight, twelve unit apartment complexes?

**Sen. Fiebiger:** It wasn't part of this amendment (coughing in background and inaudible), so I don't know how they arrived at those (inaudible) cases. Mom and pop renting the basement

and the people living in a duplex, that was the intent behind it. I don't know why they limited that number, but that was done a long time ago.

**Rep. Porter:** On the bottom of page 5 talked about the religious organizations. What happens in the aspects of health care facilities, long term care facilities that are owned by religious organizations and run as a business?

**Sen. Fiebiger:** I don't understand your question.

**Rep. Porter:** If you have a medical facility that is owned by the Catholic Church or a nursing home owned by the Lutheran Church, they are exempt then from this particular law?

**Sen. Fiebiger:** No, it would not be my expectation that they would hire be able to hire doctors or nurses based on their sexual orientation because of belief has no influence on the care of the (inaudible).

**Rep. Porter:** You say they wouldn't or would be covered by the law?

**Sen. Fiebiger:** I do not believe they would be covered by that (inaudible).

**Sen. Hawkins: Co-sponsor of bill testified in support:** It's unfortunate that we are having this hearing today. That there is any need in ND to address this issue. That we would treat individuals other than just that as individuals. I've received a number of e-mails and some threatening. Did research to see if I could answer questions if they were asked. Most are employment issues. Whether you are black or a Jewish person it's your thing. There are three places where white men are already protected. Race, gender and age. This law does not change anyone's sexual orientation. This law does make you like a person because of their sexual orientation, it is that everyone should be treated fairly when looking employment, housing and (inaudible). I want things that make us do cruel things in ND to go away.

**Rep. Corey Mock from District 42 co-sponsored and testified in support of the bill:**

People of all color, size, shapes and backgrounds are from district 42. I support 2278 because I think it is right. My girlfriend is catholic and mentioned the catechism. In paragraph 2357, says homosexuality cannot be approved. This bill has no bearing on that definition. The next paragraph 2358, I quote, "the number of men and women who have deep seeded tendencies not negligible the information which objectably disordered constitutes for most (inaudible)." A do pass for this legislation is recommended.

**Rep. Nancy Johnson, District 37 co-sponsored and testified on the bill:** We need to treat all people fairly. This bill is about fairness. I ask for a do pass recommendation.

**Mitch Marr, Executive Director of the ND Human Rights Coalition:** Testified in support.

**Amy Nelson, Executive Director of Fair Housing of ND:** See Testimony #2

**Sherri Paxon:** See Testimony #3.

**Ron Hildahl:** See Testimony #4.

**Lola Huwe:** See Testimony #5.

**David Whitcomb, licensed psychologist:** It doesn't work well for a gay person to be in a heterosexual relationship. It feels forced and unnatural much as unnatural for a left handed person being forced to write a letter with the right hand. Being homosexual does not make a person less of a human. We are asking for a change with this bill.

**Mike Lindemann:** Voiced his support of bill.

**Wayne Kutzer:** See Testimony #6.

**Susanna Magstadt:** See Testimony #7.

**Pat Conrad:** Is a landlord and have been in and out of court for being prosecuted by tenants. If this legislation is not passed, is it the intent of the legislature to give the impression, I can discriminate against gays and lesbians? I hope this is not the way it turns out in this legislation.

**John Risch with the United Transportation Union:** Voiced support.

**Angela Mathers: See Testimony #8.**

**Josh Bouche read testimony from Fargo Human Relations Commission: See Testimony #9.**

**Kristin Kitko: See Testimony #10.**

**OPPOSITION:**

**Tom Freier representing ND Family Alliance: See Testimony #11.**

**Christina Rondeau representing ND Family Alliance: See Testimony #12.**

**Janne Myrdal, State Director for Concerned Women of America of ND: See Testimony #13.**

**Christopher Dobson, Executive Director of Catholic Conference: See Testimony #14.**

**(Cannot make out name) an attorney: Testified in support of the bill.**

**Rep. Damschen: Are you aware of any language in our constitution that says homosexuals have no rights like the rest of us?**

**Lawyer: No**

**Martin Winanski: Testified in support.**

**Lisa McKee: See Testimony #15.**

**Allison Grotberg: See Testimony #16.**

**Rep. Potter: Your main concern of bill is gender identity. If this is taken out would you go along with the bill?**

**Allison Grotberg: No, only one of the problems with this bill.**

**Rep. Conrad: Have you any reason to believe this will happen in ND?**

**Allison Grotberg: You leave the door wide open for access to all of us.**

**Ron Gazell, Administrator of Hope Christian Academy in Dickinson, ND: See**

**Testimony #17.**

**Joseph McCormick from Fargo: See handout #18.** Testified in support of bill.

**Jay Reinke, Pastor Concordia Lutheran Church Williston: See Testimony #19.**

**Susan Bowman: See Testimony #19.**

**Chairman Weisz closed the hearing.**

**HANDED IN TESTIMONY BUT, DID NOT SPEAK:**

**William Schuh 21**

**Margaret Sitte 22**

**Jenny Buell 23**

**Clint Fleckenstein 24**

**Dan Tokach 25**

**David Gipp 26**

**Dr. Ross Reinhiller 27**

**Katy Collins 28**

**Dave Glaspell 29**

**Nathan Stratton 30**

**Lyle Halvorson 31**

**Colleen Whitaker 32**

**Melanie Kuhnlein 33**

**Trisha McDonald 34**

**Kevin Tengesdal 35**

**Chris Boston 36**

**Marci Goldade 37**

**Brittany Palmer 38**

<b>Ryan Kerzman</b>	<b>39</b>
<b>Karen &amp; Gerry Lunn</b>	<b>40</b>
<b>Kathy Rekau</b>	<b>41</b>



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2278

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 24, 2009

Recorder Job Number: 11481

Committee Clerk Signature

*Vicky Crabtree*

Minutes:

**Chairman Weisz:** Let's take up SB 2278.

**Rep. Conrad:** I have two amendments that I'd like to present so we can focus on discrimination on sexual orientation. First amendment is trying to not talk about schools that may not be that are a predominant religion and not going to be interfering with their religious beliefs, but they don't have to be connected to the denomination. School in Dickinson testified they are not connected to a denomination. They have 24 represented in their school and they are a Christian School and that is what they are propagating and that is what this amendment would say. Deletes all references (reads amendment).

**Rep. Conrad: Motion to accept amendment.**

**Rep. Holman: Second.**

**Rep. Conrad:** Some are saying don't vote for the amendments and don't vote for the bill. What I'm trying to do is that when we get done with this however it comes out, it is clear on what we are trying to do and that we don't leave anyone thinking we are doing something out. We are in no way trying to interfere with a business of a religious school. I would hope in the spirit of good will you would help us to be sure we come out of this ok. I ask you to support amendment.

**Rep. Porter:** Inside of this amendment, what about those businesses that are religious that they sell Christian materials and order and operate their business on main street.

**Rep. Conrad:** I didn't think of them.

**Rep. Porter:** This doesn't do anything for the business community as far as religious beliefs. Because you are so specific on educational institutions what does it do about religious based hospitals and other business?

**Rep. Conrad:** The religious corporations in the amendment, that would happen there I'm not sure. Mr. Dobson helped me write this and he's a lawyer, can he come up?

**Chairman Weisz:** Mr. Dobson, will you come forward?

**Chris Dobson, Catholic Conference:** The religious institutions and corporations are the same language itself, would cover most churches and additional institutions, but it is not every type of religious entity. Not the bookstore, and some hospitals are owned by the churches and some are not, they have a religious mission. Example is St. John's. St. John's would not be covered here because they are not owned by the church.

**Chairman Weisz:** Under the language of propagation of particular religion, does it fall under that or a non-denominational and not fall under that?

**Chris Dobson:** You mean a school? If it is not owned by a church entity then the question is if the curriculum (inaudible) is a question or fact.

**Rep. Nathe:** Is St. A's for example here in Bismarck not covered by this amendment?

**Chris Dobson:** It depends on the institution. It use to be very simple, but it is not simple anymore. We have institutions owned and operated, but maybe managed at a partnership (inaudible) entity and others completely independent from the Church. St. A's I think would be covered here.

**Rep. Conrad:** Could we say, shall applies to an association, corporation, society or educational institution with a religious mission?

**Chris Dobson:** It raises factual questions and I would like to talk to attorneys (inaudible) a religious question as well. Not sure that would resolve it.

**Rep. Damschen:** The spirit of the amendment is noble, but I think, feel like some of these issues we discuss and can't seem to resolve are I don't know how you would even cover them and include them. For that reason I would have to oppose the amendment even though I think it was a good try.

**Rep. Conrad:** Can you support the amendment as far as it goes?

**Rep. Damschen:** I'm not sure if that is clarifying.

**Chairman Weisz:** We will try a voice vote. All those in favor say yea. We will call the roll.

**Roll Call Vote: 4 yes, 9 no, 0 absent.**

**MOTION FAILED.**

**Rep. Conrad:** To clarify the whole issue of bathrooms.

**Chairman Weisz:** I looked at this and I'm not sure I understand. You have taken out the gender identity, right?

**Rep. Conrad:** Right.

**Chairman Weisz:** You added language.

**Rep. Conrad:** This amendment would take out gender identity and it is legally quite confusion. On page 4, define sexual orientation, just to be clear, we took out the words actual or perceived. The bill sponsors said the reason they put in the words actual and perceived was because they have had situations where people have been fired from their jobs because it was perceived they were homosexuals and actually heterosexual and they lost their jobs because of that. So it is the perception of somebody outside of themselves.

**Chairman Weisz:** Your language says, sexual orientation, heterosexuality, bisexuality, homosexuality and transgender. Everyone understand the amendment?

**Rep. Holman:** That really defines because one of things in some of the letters that was going around last week, one week you could be female and the next week I think that's what scaled that illogical rhetoric that has been going around. I think that is an important statement for that type thing.

**Rep. Conrad:** The definition of transgender means identification of a gender different than that as defined at birth. If you are born a boy, but identify as a girl then you are considered transgender. The bodies now can be consistent with their identification because of the medical technology. That person is the person we are trying to protect. If a person would go into a bathroom, if they were a male and identified with a female, they wouldn't want to be in a men's bathroom because they wouldn't want to use the facilities of the men. They go into a female bathroom and they haven't had surgery yet and someone objects and calls the police and it is disorderly conduct. If they go to court, their defense would be, I'm transgender, I do not identify in my mind I would be appalled at being in a men's bathroom even though I have men's (inaudible). We would protect those folks, but they would have to prove though that they are transgender. Nobody wants to protect them and that is what this is to do. Help us to make this a reasonable conversation and to get us out of this whatever you've been in I don't know.

**Rep. Conrad: Motion to accept amendment.**

**Rep. Potter: Second.**

**Rep. Frantsovog:** When I looked up sexual orientation, it identifies three items; heterosexual, bisexual and homosexual and you removed the word identity, but I have not seen anything where transgender is I was looking at definitions by the American Psychological Association. I question why the necessity to insert the work transgender or the definition. I think they are

something different than what this original bill was intended to do. We talked about homo, bi and hetero sexualities. I thought that was the intent of this bill.

**Chairman Weisz:** Gender identity is in the bill.

**Rep. Frantsvog:** (Inaudible) amendment takes it out.

**Chairman Weisz:** No. Good or bad it is currently in the bill.

**Rep. Conrad:** There has been a lot of discussion about that not having transgender in this and I have not proposed that amendment, but maybe that is another amendment that should be proposed. Transgender has been abused because of their sexuality as much as I have been and that is the reason it is there Rep. Frantsvog. Excuse me for the emotion.

**Roll Call Vote: 7 yes, 6 no, 0 absent.**

**MOTION CARRIED DO PASS**

**Rep. Conrad: Motion Do Pass as Amended.**

**Rep. Holman: Second.**

**Rep. Damschen:** Preclude my concerns with reminding people it isn't a matter of like or dislike for a person with a particular sexual orientation, but I do believe our U.S. and State Constitutions protect the inalienable rights of anyone and it doesn't make an exception for sexual orientation. I think when we start to single out nature and biological definition and classification we are on shaky ground and I don't see how we can go down that round or start a behavior side and make special provisions because I don't know where you stop doing that. I have to oppose the bill on a law making stance.

**Rep. Holman:** The fundamental difference I see is nature versus nurture in other words, were you born this way or did you choose to be this way. Religion is a choice we are not born with a genetic religion. I personally know homosexual people and I cannot understand why this is not

a good bill. These people are contributing to society and they need protection. Our rights have been determined a lot through courts. I support this bill.

**Rep. Damschen:** I don't disagree that homosexuals contribute to society and their inalienable rights should be protected just like yours and mine. One of the issues I have is if we are going to discount, if I believe it is a choice and you believe it is a birth inherited whatever, the problem I have is that we are going to discount the physical and anatomical evidence, but we are going to give credence to the mental inheritance, that it is a mental thing. We either give credence to how someone is born or we don't. Well they were born that way, but their body wasn't and there is really more proof anatomically than there is to go in and find proof mentally. I have a problem adopting that theory. My position stands as opposed.

**Rep. Porter:** As we heard the testimony on this particular bill that both sides of the issue gave compelling testimony. The one area that really stuck out in my mind is that no one in ND agrees with any kind of discrimination. I don't look at this bill as a discrimination bill, I look at it more as a status in society bill. I think by ruling sexual orientation as a status above the rest of the population that we are actually doing a reverse discrimination against the rest of the citizens of ND. I think there are protections in place for every citizen regardless if they are a lesbian, transgender that there are already protections in the law. In ND you don't have to have any reason to terminate someone's employment. When you start looking at the implications of a small business running their business on their personal beliefs and not being able to say no now because of a status changing society that that is wrong. When you can sue a business because they say no to baking that cake or taking the photographs I think this is a wrong thing to do inside of our society also. I certainly won't be supporting the do pass motion.

**Rep. Conrad:** Where do you get in the bill that someone is required to provide service for someone?

**Rep. Porter:** On Section 1, that it is a state policy against sexual discrimination based on sexual orientation.

**Rep. Conrad:** It refers to the employer and housing (something about a red herring).

**Rep. Potter:** It comes down to discrimination. It doesn't set anyone up to be higher or better status than anyone else. Are you going to discriminate against with a group of people or not, to me that is bottom line.

**Rep. Damschen:** My vote in opposition will not mean I think you should discriminate against anyone. I believe it protects a particular sector of society and either singles them out or sets them above the rest. I want to make it clear that opposing I am not endorsing prejudice.

**Roll Call Vote for a Do Pass as Amended on SB 2278: 6 yes, 7 no, 0 absent.**

**MOTION FAILS.**

**Rep. Porter: Motion for a DO NOT PASS as amended.**

**Rep. Uglem: Second.**

**Roll Call Vote on DO NOT PASS as Amended: 7 yes, 6 no, 0 absent.**

**MOTION CARRIED ON DO NOT PASS.**

**BILL CARRIER: Rep. Weisz.**

Date: 03/24/09  
Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2278**

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Conrad Seconded By Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ		✓	REP. TOM CONKLIN		✓
VICE-CHAIR VONNIE PIETSCH		✓	REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN		✓	REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI		✓
REP. CURT HOFSTAD		✓	REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE		✓			
REP. TODD PORTER		✓			
REP. GERRY UGLEM		✓			

start 2

start 1

Total (Yes) 7 No 9

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

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

A-1 Conrad

failed



VR  
3/24/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2278

Page 3, line 20, remove "Gender identity" means actual or perceived gender-related identity, appearance.

Page 3, remove lines 21 and 22

Page 3, line 23, remove "11."

Page 3, line 27, remove the overstrike over "11." and remove "12."

Page 3, line 29, remove the overstrike over "12." and remove "13."

Page 4, line 1, remove the overstrike over "13." and remove "14."

Page 4, line 6, remove the overstrike over "14." and remove "15."

Page 4, line 14, remove the overstrike over "15." and remove "16."

Page 4, line 17, remove the overstrike over "16." and remove "17."

Page 4, line 20, remove the overstrike over "17." and remove "18."

Page 4, line 28, remove the overstrike over "18." and remove "19."

Page 4, line 30, remove the overstrike over "19." and remove "20." and remove "actual or perceived"

Page 4, line 31, replace "gender identity" with "transgender"

Page 5, line 1, replace "21." with "20."

Page 5, after line 4, insert:

"21. "Transgender" means identification with a gender different than that assigned at birth."

Renumber accordingly

Date: 03/20/09  
Roll Call Vote #: 2

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2078**

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Conrad Seconded By Potter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN		✓	REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI		✓
REP. CURT HOFSTAD		✓	REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE		✓			
REP. TODD PORTER		✓			
REP. GERRY UGLEM		✓			

Total (Yes) 4 No 6

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

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

A-2 conrad carries

Date: 03/24/09  
Roll Call Vote #: 3

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2278**

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Conrad Seconded By Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ		✓	REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN		✓	REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI		✓
REP. CURT HOFSTAD		✓	REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE		✓			
REP. TODD PORTER		✓			
REP. GERRY UGLEM		✓			

Total (Yes) 6 No 7

Absent \_\_\_\_\_

Bill Carrier Rep. Weisz

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

*fails*

Date: 03/24/09  
Roll Call Vote #: 4

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2278**

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Porter Seconded By Uglem

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN		✓
VICE-CHAIR VONNIE PIETSCH		✓	REP. KARI L CONRAD		✓
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN		✓
REP. ROBERT FRANTSVOG		✓	REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER		✓
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 7 No 6

Absent 0

Bill Carrier Weisz

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

*Motion Carried  
Do NOT Pass*

**REPORT OF STANDING COMMITTEE**

SB 2278, as engrossed: Human Services Committee (Rep. Welsz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2278 was placed on the Sixth order on the calendar.

Page 3, line 20, remove "Gender identity" means actual or perceived gender-related identity, appearance."

Page 3, remove lines 21 and 22

Page 3, line 23, remove "11."

Page 3, line 27, remove the overstrike over "~~11.~~" and remove "12."

Page 3, line 29, remove the overstrike over "~~12.~~" and remove "13."

Page 4, line 1, remove the overstrike over "~~13.~~" and remove "14."

Page 4, line 6, remove the overstrike over "~~14.~~" and remove "15."

Page 4, line 14, remove the overstrike over "~~15.~~" and remove "16."

Page 4, line 17, remove the overstrike over "~~16.~~" and remove "17."

Page 4, line 20, remove the overstrike over "~~17.~~" and remove "18."

Page 4, line 28, remove the overstrike over "~~18.~~" and remove "19."

Page 4, line 30, remove the overstrike over "~~19.~~" and remove "20." and remove "actual or perceived"

Page 4, line 31, replace "gender identity" with "transgender"

Page 5, line 1, replace "21." with "20."

Page 5, after line 4, insert:

"21. "Transgender" means identification with a gender different than that assigned at birth."

Re-number accordingly

2009 TESTIMONY

SB 2278

SB 2278

Chairman Nething, members of the Senate Judiciary Committee, for the record, I am Senator Tom Fiebiger, District 45 – Fargo. I appear today in support of Senate Bill 2278. Mr. Chairman, I will go through the bill with the Committee, but would first like to make a few comments.

I come here today wearing several different hats. I am a legislator. I am an attorney having represented North Dakota citizens in civil rights cases for almost 20 years. I am a member of the ND Human Rights Commission and a former member and chair of the Fargo Human Relations Commission. I am also the parent of a wonderful, bright and caring son – who happens to be gay.

The message I want to communicate is that the people this bill is designed to protect from losing their jobs or their home because they are gay, lesbian, bisexual or transgender are our sons, daughters, brothers and sisters. They are the folks we work with and the worshipers that we sit next to in the pews on Sunday. They are our friends and family; they are the people we love.

As a practicing attorney, I have fielded calls over the years from North Dakota citizens asking me what can be done to help them because they lost their job because they were gay. Sadly, there was nothing I could legally do to help them. I have asked those looking for legal assistance on this issue whether they were working in a neighboring Minnesota community, since Minnesota offers protections for those fired because of their sexual orientation. In fact, with recent legislation passed since 2007 in Iowa and Oregon, approximately 52% of the citizens in the United States enjoy protections against discrimination based on their being gay, lesbian or bisexual. Approximately 37% of our citizens live in states where that protection also applies to transgender citizens.

There is a reason approximately 90% of the Fortune 500 companies include sexual orientation as a protected class in their company handbook. They want their business to be successful – and that is accomplished by being invitational to the best and the brightest – no matter what their sexual orientation. Employers also benefit when their workers can be themselves at work. Imagine having to worry that if you talk about your personal life or have a picture of your partner up on your desk at work – something many of us take for granted, you can be fired and lose your livelihood. That's the reality for many North Dakota citizens without the adoption of this legislation.

As a parent, I know the fear that goes with your child being put in physical danger in your own North Dakota community - because of who he loves.

Turning to the bill itself, the primary sections affected and amended are found in our state's Human Rights Act and Fair Housing Act. Mr. Chairman, I also have an amendment to propose to the bill that provides for certain religious exemptions. I'll walk the committee through the bill.

Mr. Chairman, Martin Luther King, Jr. said that the time is always right to do what is right. That applies to SB 2278. I respectfully urge this committee to do what's right and give SB 2278 a DO PASS recommendation.

Thank you.

2/2/2009

get copy to Diane

Chairman and members of the Senate Judiciary Committee:

Senator Fiebiger explained the bill, so I'll just try to provide a little more context. A little less than half the country extends these basic protections, and it is a discussion taking place on the national level. Minnesota protects sexual orientation; Montana is working on similar legislation as we speak; and South Dakota is building to it.

Business and community leaders across North Dakota already include sexual orientation in their non-discrimination clauses. Hospitals, banks, tech companies and even the North Dakota University System are included in that list.

Working on this bill, I've seen our support swell across the state. Literally thousands of people in support of this include teachers and students, parents and grandparents, faith leaders and professors, Democrats and Republicans, business people and attorneys, easterners and westerners.

This bill asks that North Dakota state law truly reflects the values of its citizens.

We've had questions about whether this type of discrimination happens. I can assure you: it does. As can any attorney who practices employment law. But I'll leave the stories to the witnesses behind me.

You cannot fire someone because they are a single parent, because of their political affiliations or because of their religious beliefs—atheists, Muslims and Christians alike.

You cannot evict someone because they work on Sundays, eat pork, or watch violent movies.

For the same reasons, you should not be able to discriminate against someone because of their sexual orientation, perceived sexual orientation or gender identity.

The opposition will talk about values and they will talk about family. So let's talk about those things.

If we're talking about values, let's talk about the core values of loving our neighbors and making sure that everyone has a fair shot at a decent job and a place to live.

If we're talking about family, let's talk about all families. I have families behind me here today: parents, grandparents, siblings, and children all affected by this.



And let's be very clear: when either side talks about homosexuals, we are talking about some of your colleagues in the Senate and in the House. We're talking about your colleagues' families. We are talking about people we all know.

The opposition would prefer that they just stay in the closet. They would prefer to maintain the ability to discriminate against a group of people—to maintain the ability to take their jobs, their homes and—in extreme cases—distance their families.

It's simply not right. We should not treat people this way, and that's what this bill hopes to prevent.

This is a simple bill. It's a bill that expands and better defines our rights, rather than restrict them. It's a bill that extends fairness and opportunity to more people. It's a bill that values all North Dakotans.

I hope you'll support it wholeheartedly.

In service,



Mitch Marr  
Executive Director  
North Dakota Human Rights Coalition

Good morning, Chairman Nething and members of the Senate Judiciary Committee. My name is Sherri Paxon and I live in the Bismarck-Mandan area. I'm here today in support of SB 2278, which will add the category of sexual orientation to the North Dakota policy protecting citizens in the areas of employment, accommodations, government services and credit transactions. Specifying sexual orientation, which as defined in the legislation includes actual or perceived heterosexuality, bisexuality, homosexuality and gender identity or expression, is an absolutely essential improvement to the current North Dakota law.

My spouse, Vickie, and I have worked with Equality North Dakota, Dakota OutRight and the North Dakota Human Rights Coalition, which all strive to improve conditions for lesbian, gay, bisexual and transgender (LGBT) people in the state. As we talk with members of these communities, one of the most prevalent fears voiced is being fired when an employer discovers they are lesbian, gay, bisexual or transgender. Hiding the gender of your significant other, editing your conversations with co-workers and remaining closeted in the workplace is an extremely stressful and difficult way to live. Without the security of legal protection, members of the gay community live in a climate of fear that can result in increased absenteeism and decreased performance, as well as diminished self esteem and negative impacts on physical health.

This fear described by many LGBT individuals is based on fact. In the 2001 Public Perception Study of Discrimination in North Dakota, commissioned by the North Dakota Department of Labor Human Rights Division, questions were asked based on the existing law that covers race, color, religion, sex, national origin, age and mental or physical disability. Though the survey was limited to those specific categories the respondents volunteered several descriptions of discrimination based on sexual orientation. This is a clear indication that the addition of sexual orientation to the law is needed.

On a personal note, several years ago I decided to not let fear choose my path and would no longer hide my sexual orientation. Though this was a mentally healthy choice, it had repercussions. At my place of employment I was considered a good and valuable employee. Both supervisors and subordinates praised my work and my annual evaluations were excellent. This all changed when it became evident to my coworkers that I was in a same gender committed relationship. My supervisors no longer openly communicated with me and I sensed that my staff, though remaining outwardly courteous, were no longer a part of the team we had developed. The climate quickly degenerated into instances of harassment and barely disguised workplace bullying. After several months of walking on eggshells, of increased effort and taking on extra responsibilities, it was clear that nothing I could do would improve these work conditions. Because I had no legal recourse and in order to protect my mental and physical health, I felt I had to resign my position. I truly believe the outcome would have been different had the proposed amendment to this legislation been in effect at that time.

I urge you to make this common sense improvement in the current law, in order to better protect more hardworking North Dakotans.

Thank you for your time and attention.

Testimony in Support of Senate Bill 2278  
February 2, 2009

*Same  
given  
to House.*

Senator Nething and Members of the Committee:

My name is Lola Huwe. I am a lifelong resident of North Dakota and have lived in Bismarck for 55 years. I am speaking in support of Senate Bill 2278. My husband and I have been married for 51 years. We have three children, one of whom is a lesbian. I think this bill is very important because all of my children should have the same protection under the law. My daughter did not choose to be a lesbian any more than my other children chose to be heterosexual. No parent should have to be concerned for their children's welfare just because of whom they love.

For twenty years, I have been affiliated with Parents, Families and Friends of Lesbian and Gays (PFLAG), a national organization that offers support and advocacy for the GLBT community and their allies. In that capacity, I have met many GLBT individuals and their loved ones. The younger ones who contact our chapter and come to our meetings while they are still in high school invariably leave the state as soon as they are able, to continue their education and later to seek employment where the climate is more friendly. When gays relocate here for their employment, they often leave because they are treated as second class citizens without the rights they have elsewhere.

North Dakota is doing all sorts of things to entice people to come to our state but fail to do anything to keep some of our brightest and most talented here.

Lola Huwe  
428 North 15<sup>th</sup> Street  
Bismarck, ND 58501  
223-7773  
MamaLola@aol.com



Tom Freier

*A Trusted Voice*

Tom D Freier  
EXECUTIVE DIRECTOR

**Senate Judiciary Committee  
February 3rd, 2009  
SB 2278**

Mr. Chairman, and members of the Senate Judiciary Committee, I am Tom Freier representing the North Dakota Family Alliance. I am here testifying in opposition to SB 2278.

The North Dakota Century Code and Constitution currently provide for the protection of all in North Dakota from discrimination and prejudice. Constitutional rights afforded to all should not be jeopardized by the granting of special status to some. Granting of special status is a threat to religious liberty, free speech, right of conscience, and the free market place.

The definition of sexual orientation is subjective and vague. Criteria to determine discrimination needs to be objective. Determining discrimination in regard to someone's color, age, or physical disability is objective. Enabling cases of discrimination in relation to such subjectivity can only invite litigation.

Whatever the intent of this bill might be, the unintended consequences that loom are huge. Whether in a religious environment, the education community, or the business and employment arena, the opportunities to exploit the vagueness of this legislation are great. The likelihood for adverse discrimination is highly likely.

When the broad and subjective context of this bill is taken into consideration, as it relates to public accommodations and employment—it seems there is little protection for fellow employees, employers, and the public in general.

Whether intended or not, this legislation will impact the ability of parents to fulfill their inherent rights and obligations to raise and instruct their children. The parental right should not be compromised, diminished, or diluted, and the passage of this bill would do just that.

The North Dakota Family Alliance opposes arbitrary discrimination and prejudice, and believes these constitutional protections currently exist. We believe this bill represents a major encroachment upon the rights of individuals, businesses, and organizations, and our religious liberties.

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

OPP

Janne Myrdal

Beverly LaHaye  
Chairman



SB 2278 Senate Judiciary Committee Feb. 3, 2009

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 of which 1500 are North Dakota citizens. We are here today in opposition to SB2278.

We fail to see the evidence that sexual orientation meets the criteria set forth by the U.S. Supreme Court defining Human Rights. The Court has devised a three-part test to determine whether a class of persons qualifies as a true minority: **They must be defined by an immutable characteristic (unchangeable, like skin color), they must be economically deprived, and they must suffer from a history of discrimination and political powerlessness.** Sexual orientation fits into none of these requisite categories. Instead, the facts show that sexual behavior is changeable, that those who practice non-traditional sexual preference are largely affluent, and that their activists represent one of the most powerful lobbies in the world per capita.

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. Further, the bill has no exemptions for those with personal convictions, thus forcing individuals to accept and support sexual behaviors with which they disagree.

SB2278 actually creates discrimination. In general, when "sexual orientation" is added to a legal or corporate nondiscrimination code, it is a giant step toward the adoption of policies that discriminate against people with traditional views of morality. Indeed, if we look closely at the term "sexual orientation" itself, it is really a radical challenge to the beliefs of all major religious faiths because it attacks the notion that sexual behavior has moral dimensions. According to the therapeutic manual of the American Psychiatric Association, there are at least 20 distinctive sexual variations of "sexual orientation," and perhaps many more. (See attached document.) Since the underlying concept of "sexual orientation" is that all sexual behavior is equally valid, there are no good choices or bad choices, just inclinations. There is no longer any definition of the two sexes. SB2278 would force the acceptance of any "inclination." Private businesses and organizations should not be forced by the state to set aside their moral or religious principles, based upon someone's proposed rights due to the individual's sexual behavior.

CONCERNED WOMEN FOR AMERICA  
OF NORTH DAKOTA

Beverly LaHaye  
Chairman



This law would not protect rights but would rather grant special privileges based strictly on someone's sexual behavior. Further, those privileges would have a significant impact on the constitutional rights of North Dakotans who may have a moral objection to certain sexual behavior. Other states which have passed similar laws have faced numerous lawsuits, including some filed by individuals claiming the right to use a restroom or other public space reserved for the opposite sex. Both federal and North Dakota law already prohibits sex discrimination and sexual harassment. If SB 2278 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. Should sexual preference now trump the rights of free speech and freedom of religion?

It may be claimed to be politically incorrect, or even old fashioned, but should what happens between two consenting adults in privacy even be of public and legislative discussion or concern? We think not. If we allow sexual preference to become a matter of laws and policies, it will reach our workplaces, our schools, our families, our children our youth and even our houses of worship to the great detriment of our society. This will surely challenge the common sense, strength of character and founding principles this great Nation and State were built on. The liberties we now **all** enjoy, regardless of sexual orientation, will all stand defenseless against this discriminatory proposed law. It will have a negative effect on our society, removing all moral boundaries, and allowing further sexualization of our public square

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

We, again, urge your "Do Not Pass" vote on SB2278. Your consideration of this request is appreciated.

CONCERNED WOMEN FOR AMERICA  
OF NORTH DAKOTA

[Page numbers are from "Paraphilias," *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (Washington: American Psychiatric Association, 2000), pp. 566-582.]

1. **Heterosexuality:** the universal norm: sexual interaction with the opposite sex.
2. **Homosexuality or "Gay":** sexual interaction with persons of the same sex.
3. **Bisexuality:** sexual interaction with both males and females.
4. **Transgenderism:** an umbrella term referring to and/or covering transvestitism, drag queen/kings, and transsexualism.
5. **Pedophilia:** "sexual activity with a prepubescent child (generally age 13 years or younger). The individual with Pedophilia must be age 16 years or older and at least 5 years older than the child. For individuals in late adolescence with Pedophilia, no precise age difference is specified, and clinical judgment must be used; both the sexual maturity of the child and the age difference must be taken into account." (p.571)
6. **Transsexuality:** the condition in which a person's "gender" identity is different from his or her anatomical sex.
7. **Transvestitism:** the condition in which a person is sexually stimulated or gratified by wearing the clothes of the other sex.
8. **Transvestic fetishism:** for males, "intense sexually arousing fantasies, sexual urges, or behaviors involving cross-dressing." (p. 575)
9. **Autogynephilia:** the sexual arousal of a man by his own perception of himself as a woman or dressed as a woman. (p. 574)
10. **Voyeurism:** "obtaining sexual arousal through the act of observing unsuspecting individuals, usually strangers, who are naked, in the process of disrobing, or engaging in sexual activity." (p. 575)
11. **Exhibitionism:** "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving the exposure of one's genitals to an unsuspecting stranger." (p. 569)
12. **Fetishism or Sexual Fetishism:** "intense sexually arousing fantasies, sexual urges, or behaviors involving the use of nonliving objects (e.g. female undergarments)." (p. 570)
13. **Zoophilia:** becoming excited by and/or engaging in sexual activity with animals. (p. 576)
14. **Sexual Sadism:** "recurrent, intense, sexually arousing fantasies, sexual urges, or behaviors involving acts (real, not simulated) in which the psychological or physical suffering (including humiliation) of the victim is sexually exciting to the person." (p. 574)
15. **Sexual Masochism:** "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving the act (real, not simulated) of being humiliated, beaten, bound, or otherwise made to suffer." (p. 573)
16. **Necrophilia:** sexual arousal and/or activity with a corpse. (p. 576)
17. **Klismaphilia:** erotic pleasure derived from enemas. (p. 576)
18. **Telephone Scatalogia:** the compulsion to utter obscene topics over the phone. (p. 576)
19. **Urophilia:** sexual arousal associated with urine. (p. 576)
20. **Coprophilia:** sexual arousal associated with feces. (p. 576)
21. **Partialism:** "sexual arousal obtained through exclusive focus on part of the body."(p. 576)
22. **Gender Identity Disorder:** "a strong and persistent cross-gender identification, which is the desire to be, or the insistence that one is, of the other sex," along with "persistent discomfort about one's assigned sex or a sense of the inappropriateness in the gender role of that sex." (p. 576)
23. **Frotteurism:** "touching and rubbing against a nonconsenting person." (p. 570)

*Neutral*

John Hoeven  
Governor

Lisa K. Fair McEvers  
Commissioner



State Capitol - 13th Floor  
600 E Boulevard Ave Dept 406  
Bismarck, ND 58505-0340

nd.gov/labor  
nd.gov/humanrights

Testimony on SB 2278  
Prepared for the  
Senate Judiciary Committee  
February 3, 2009

Chairman Nething and members of the Senate Judiciary Committee, I am Lisa Fair McEvers, Commissioner of Labor. My position on SB 2278 is neutral. I am here to provide information on how this bill may affect the Department of Labor.

The department has two primary areas of responsibility: establishing and enforcing rules relating to the wages and working conditions of employees and administering and enforcing human rights under the North Dakota Human Rights Act and the North Dakota Housing Discrimination Act.

In addition to receiving and investigating complaints from individuals who believe they have been victims of unlawful discrimination under state anti-discrimination laws, the department's Human Rights Division also investigates fair housing cases for the United States Department of Housing and Urban Development (HUD) and employment discrimination cases for the Equal Employment Opportunity Commission (EEOC).

The number of cases in both the Wage and Hour Division and the Human Rights Division are projected to increase significantly this biennium. In the Human Rights Division, discrimination claims are on the rise with the total number of cases projected to increase by 12% during the current biennium. Most of the increase is attributed to a 30% increase in housing discrimination claims, but the number of employment and public service/public accommodations cases have also increased. During the first 18 months of the current biennium, the department resolved 213 employment discrimination complaints, 87 housing discrimination complaints, and 52 complaints alleging discrimination in public accommodations and public services.

The Human Rights Act provides protection from discrimination in employment, public services, public accommodations and credit transactions in the following protected categories: race, color, national origin, religion, sex, age, mental or physical disability, marital status, and receipt of public assistance. Employment discrimination cases include an additional protection for lawful activity off the employer's premises during non-working hours which is not in direct conflict with the essential business-related interests of the employer.



The Housing Discrimination Act provides the same protected categories as generally found in the Human Rights Act (except the "lawful activity" category), and in addition, has the protected category of familial status.

With an already increasing caseload, my primary concern with SB 2278 is whether the department has adequate resources to handle an additional protected category. It is difficult to estimate how adding a new protected category may affect the number of complaints filed. Since there has been similar legislation passed in other states and proposed at the federal level I have relied in great part in my estimating on statistics found by studying other jurisdictions.

According to cost estimates prepared by the Congressional Budget Office adding federal protection for sexual orientation and gender identity are likely to increase complaint filings in the range of 5 to 7%. Another study conducted by the United States General Office of Accounting in 2002 has found that in those states with a law making it illegal to discriminate in employment on the basis of sexual orientation, relatively few complaints of such discrimination has been made. The statistical data ranged from a .5% increase to a 9% increase. Information found on the Minnesota Department of Human Rights indicates that since Minnesota added protection for sexual orientation and gender identity the number of charges filed have been about 3% of the total caseload since 1994. Based on this information, my best estimate is that the new protected category may result in an increase of filing in the 3-5% range.

Projected human rights and housing discrimination cases closed during the current biennium based on the first 18 months of the biennium is 469 cases. Using 5% as a guide for new case filings, the department may receive 23 cases as a result of adding the new protection. If there is a 3% increase, the number of cases filed is estimated to be 14 cases.

During the current biennium, my staff is working a significant amount of overtime each month. I have requested an additional investigator in the department's budget, HB 1007. If that FTE is granted, I believe that the new duties added by this new protected category could be handled by the department's staff without another additional FTE. If the department is not granted the FTE, any additional amount of work could have a negative impact on the timeliness of the workload already existing.

There would be some one time costs associated with adding a new protected category, such as updating brochures, forms, posters, and other educational materials. In addition, my staff would need to have some training on the issues associated with investigating this new protected category.

In addition to the statistical information provided on the current biennium, attached you will find information from the 2005-07 biennial report.

**Summary of EEO Charges, 2005-07 Biennium**

Charges Pending 6/30/2005	44
New Charges Filed 7/1/2005 – 6/30/2007	227
Charges Closed 7/1/2005 – 6/30/2007	230
Charges Pending 6/30/2007	41

**EEO Charges Closed, 2005-07 Biennium  
by Statutory Jurisdiction**

Title VII of the Civil Rights Act of 1964	104
Americans with Disabilities Act of 1990	90
Age Discrimination in Employment Act of 1967	51
North Dakota Human Rights Act Only <sup>1</sup>	17

**EEO Charges Closed, 2005-07 Biennium  
by Basis of Charge<sup>2</sup>**

Age	59
Color	27
Disability	100
Marital Status	5
National Origin	9
Pregnancy	9
Receipt of Public Assistance	4
Race	38
Religion	3
Retaliation	61
Sex	93

<sup>1</sup>All charges meeting federal jurisdiction also meet North Dakota jurisdiction.

<sup>2</sup>Charges may have more than one basis.

**Housing Discrimination Complaints  
2005-07 Biennium**

Complaints Pending 6/30/2005	13
New Complaints Filed 7/1/2005 – 6/30/2007	88
Complaints Closed 7/1/2005 – 6/30/2007	89
Complaints Pending 6/30/2007	12

**Housing Discrimination Complaints Closed  
2005-07 Biennium**

Settled	38
Determined with No Probable Cause	34
Determined with Probable Cause	10
Referred to HUD	0
Dismissed	0
Withdrawn by Claimant	7
<b>Total Complaints Closed</b>	<b>89</b>

**Housing Discrimination Complaints Closed  
2005-07 Biennium by Basis of Charge<sup>3</sup>**

Age	1
Color	3
Disability	66
Familial Status	17
Marital Status	3
National Origin	5
Receipt of Public Assistance	8
Race	16
Religion	3
Retaliation	7
Sex	12

<sup>3</sup>Complaints may have more than one basis.

*Neutral*

*Maslowski*

**SENATE BILL NO. 2278**

**Presented by:** Larry Maslowski  
Senior Analyst and Director, Consumer Protection Property  
and Casualty Division  
North Dakota Insurance Department

**Before:** Senate Judiciary Committee  
Senator David Nething, Chairman

**Date:** February 3, 2009

**TESTIMONY**

Good Morning, Chairman Nething and members of the Senate Judiciary Committee. My name is Larry Maslowski and I am the Senior Analyst and Division Director of the Property and Casualty Unit of the North Dakota Insurance Department. I am here to testify on Senate Bill No. 2278 in a neutral position and to offer friendly amendments.

The proposed bill in Sections 19 and 20 would amend portions of N.D.C.C. Title 26.1 (the insurance code).

Section 19 found on page 11 focuses on N.D.C.C. § 26.1-40-11. Chapter 26.1-40 is the chapter which deals with private passenger automobile insurance policies only.

Section 20, also found on page 11, focuses on N.D.C.C. § 26.1-47-04. Chapter 26.1-47 is the section which deals with preferred provider organizations and agreements with health care providers only.

Should the committee decide to approve the changes proposed in this bill making them applicable to the business of insurance, the committee may wish to consider making similar changes to other areas of the insurance code in the interest of consistency.

### **Insurance in General**

N.D.C.C. Chapter 26.1-04 deals with the general prohibited practices for insurance. N.D.C.C. § 26.1-04-03(11) has similar language and would need to be changed..

### **Property and Casualty Insurance**

N.D.C.C. Chapter 26.1-39 deals with property insurance, in particular, homeowners and renters. N.D.C.C. § 26.1-39-17-(1) has language similar to that found in Section 19 and would need to be changed.

N.D.C.C. Chapter 26.1-30.1 deals with commercial insurance including commercial automobile insurance. N.D.C.C. § 26.1-30.1-01.1(1) also has language similar to that found in Section 19 and would need to be changed.

### **Life and Health Insurance**

The change referenced above in the Insurance in General section to N.D.C.C. § 26.1-04-03-(11) would be applicable to all lines of insurance including life and health insurance.

We offer these amendments in the spirit of the proposed bill, and to provide consistency to the law making process. However, we are aware and would like to make you aware that some of these changes may bring about some unintended consequences which we have not yet been able to identify.

Thank you and I will stand for questions.

To All Concerned:

GLBT Rights is definitely something North Dakota should adopt, in fact the whole nation should, but if we have to do it one state at a time, I would be so proud to say we were one of the first.

The first time I learned what the word gay meant I was surprised, but even more surprised at how mean people were about it and how these people were being condemned by so many different groups of people. This seemed so wrong considering I was a product of the Civil Rights Movement.

Life pushed this worry to the back of my mind because I didn't know anyone who was gay, lesbian, bisexual or transgender, or so I thought. Unfortunately I often wait to act until things hit close to home. I was too busy with my own life working and starting a family that I wasn't paying attention to the injustices around me.

I left North Dakota for Ohio for about ten years. There was so much talk about gay rights there and open displays of affection that I had never seen back home. In those years my eyes were opened.... Not by the news of beatings, killings, lack of rights, churches condemning but by friends back home,

Friends of mine and of those I love were having to come to terms with who they really were. Some struggled so hard to be "normal" that they could no longer take it. Many moved to find a place where they could be accepted. Some drank and lived a life of lies and unfortunately one took his life, because he didn't want to shame his family. How could this be happening to such wonderful people. I again began to hurt and wonder, how could family, church and communities condemn their own.

We moved back home and times were starting to change and I got a chance to be part of it. I found a church that soon became OPEN AND AFFIRMING. What was that I wondered. It meant everyone was welcome to the church and the Lords Table regardless of race, religion, sexual orientation or social and economic status. It was wonderful to see everyone working together and know it is okay to be judged by our character alone.

I soon discovered that the greater community was not on the same page. My GLBT friends struggled with health, family and career issues and again I was afraid to speak up. Well no more! We need to level this playing field and not let our old prejudices and laws keep us from doing what is right. The law can establish full human rights for all even though some minds and hearts aren't there, yet. Hopefully time will open both because I know in my heart that God loves each and everyone of us, no exceptions!

Respectfully Submitted,  
Mary C. Tate  
Fargo, ND

Good Evening ND Senate Judiciary Committee,

I am writing to you in support of Senate Bill 2278, which is scheduled for hearing tomorrow, Tuesday, February 3 at 10:15 am. I am unable to attend the hearing in person due to work obligations, so please consider this e-mail as my official testimony for the record. It is my hope that this testimony and the testimonies you hear tomorrow morning will move the Senate Judiciary Committee to fully support SB 2278 with a "Do Pass" recommendation.

I am a 26 year-old gay man, who has spent his entire life as a proud resident of North Dakota. I was born and raised in Minot, graduated from Bishop Ryan High School in 2000, and have received my B.S. in Political Science and M.Ed. in Educational Leadership from North Dakota State University. I currently live in Fargo and have been employed by NDSU in a variety of roles almost entirely since 2003. I am extensively involved in the Fargo-Moorhead community serving on the Fargo Human Relations Commission, the Pride Collective & Community Center Board, volunteering with Special Olympics, the Dakota Boys & Girls Ranch, my Fraternity, Alpha Tau Omega, and a number of community service projects.

Senate Bill 2278 directly affects me as a young person who wishes to remain in North Dakota, with the hopes of continuing my success professionally and as an active member of the community. I am a fifth generation North Dakotan, the descendant of German immigrants who settled in the rural areas of Turtle Lake and Sykeston with the hopes of continuing their agrarian heritage and contributing to a new country that allowed them to be successful regardless of who they were. I have had the opportunity to work for an employer who recognizes my talents and merits as an employee based on hard work and dedication. I have had the opportunity to purchase my own home and contribute to the tax base of my community, without any discrimination limiting my ability to do so.

Unfortunately, I know of too many North Dakotans who have been mistreated in the areas of housing and employment because of who they are, regardless of their ability to pay rent or their merits as an employee. Over the past two years, I have heard the frustration and distress of many hardworking North Dakotans who have been abruptly fired from their jobs and blatantly kicked out of their apartments because they are lesbian, gay, bisexual, and/or transgender. These actions are not representative of the North Dakota values that were instilled in me as a young person. Time and time again I was taught by teachers, neighbors, priests, and family members that North Dakota was a state where you could be successful by working hard, giving back to your community, and treating others with the respect. Not once was I taught that discrimination was right. Never was I told to think I was somewhat better or less than my neighbors. Yet, I have neighbors, friends, and fellow North Dakotans who are told this when discriminated against by an employer or landlord who does not agree with the way they live their personal life.

My first job out of college was as an Admission Counselor for NDSU. I loved this job as it allowed me the opportunity to travel throughout North Dakota, South Dakota, Montana, and Minnesota. My job was to inform potential students and their family members about all the opportunities that they could take advantage of at NDSU or any of the ND colleges and universities. North Dakota is a great place to get a college education due to our dedicated faculty and staff, affordability, and high placement rate of our graduates. Currently, I serve as a Career Specialist with the NDSU Career Center where my role is to assist students in any aspect of their job search. Knowing that the state is

working hard to fill hundreds of professional level jobs and reduce the growing out-migration, the staff of the Career Center works hard with local employers to identify internship and full-time employment opportunities for our students. It would be devastating for us to receive feedback from one of our students, who earned a degree from NDSU, that they were let go from their internship or their job offer was rescinded, not because they were not qualified, but because the prospective employer had suspicions that the student was lesbian, gay, bisexual, or transgender. Allowing this type of discrimination is completely contradictory to the states efforts of reducing out-migration and assisting employers in filling vacancies by marketing to prospective employees out of state and the Commerce Departments current efforts through the ND Ambassador Programs and Experience North Dakota events in Denver and Minneapolis.  
(<http://www.experience.nd.gov/>)

As a member of the Fargo Human Relations Commission, I am fully aware of the state's efforts to end homelessness and assist communities in developing 10-year plans to accomplish this progressive task. The ND Coalition for Homeless People has worked diligently with Governor Hoeven's office, the ND Housing Finance Agency, several city governments, tribal governments, and a number of non-profit organizations to implement community-based initiatives that fall in line with a state-wide plan to end homelessness in North Dakota. This collaborative effort has received national recognition with Govern Hoeven being a 2008 recipient of the "Home for Every American" Governor Award from the United States Interagency Council on Homelessness. Governor Hoeven was not alone with the cities of Bismarck, Dickinson, Fargo, Grand Forks, Jamestown, Mandan, Minot and Williston, and the Mandan, Hidatsa & Arikara Nation and Turtle Mountain Band of Chippewa Indians for addressing homeless issues within their communities. Allowing North Dakotans to be denied housing opportunities or removed from their current homes based on discrimination would be another contradictory action to the hard work of these communities, government entities, and non-profit agencies.  
(<http://ndhomelesscoalition.org/news/press.html>)

Finally, this all comes down to a simple concept of right and wrong. As young North Dakotans, we are taught to treat others as we wish to be treated. By allowing North Dakota to be free from discriminatory practices, we will continue to build a diverse and inclusive state that allows all of its citizens and residents to be successful employees, renters, homeowners, and members of their community.

As a fellow North Dakota, I ask you to support Senate Bill 2278 so that I may continue to be successful, regardless of where I work and live. I am proud to have been raised in this great state and would like to continue to be an advocate and ambassador of this state in which hard working individuals are allowed to live free of discrimination.

**In Gratitude,**

Joshua A. Boschee  
1542 9th Ave S.  
Fargo, ND 58103  
(701) 367-3513



2/2/2009

*Same to  
given  
House.*

Senate Judiciary Committee:

When I moved to Fargo almost 4 years ago, I obtained a job through Preference Personnel at Wanzek Construction. It was not a temp to hire job it was a full time position. I was interviewed by the human resources department at Wanzek and hired. After I had worked at Wanzek for 4 weeks I was called into the owner's office where he proceeded to tell me he had to let me go, because I didn't "fit in". There were never any complaints about my performance and I got along with the other employees. When I had called Preference to notify them of what had occurred, they where shocked to learn that I had been let, as was human resources representative at Wanzek who had interviewed me, she hadn't heard any complaints about my performance. Needless to say, I was upset, and hurt, as well as shocked to be let go under such circumstances. I have never been fired from a job, nor have I ever been told that I could not work somewhere because I didn't "fit in". Since it may be obvious to some that I am gay because of my appearance, I had reason to believe that not fitting in meant I was not retained as an employee because I am gay.

Kathy Rekau  
krekau@msn.com

January 21, 2009

Senate Judiciary Committee:

I am writing to ask that you support SB 2278. I hope that you will support this bill, which will prohibit discrimination against North Dakota citizens, including me. I am currently a graduate student at North Dakota State University in Couple and Family Therapy. After graduation, I will be a highly trained therapist and an ambitious young professional seeking employment. Currently, I plan to leave the state after graduation and move across the river to Minnesota. As of right now, North Dakota does not offer me any incentives or protection to remain here after graduation. This is a shame, since I currently live in downtown Fargo and am enjoying its revitalization immensely. However, if I were to move to Minnesota, I would not have to worry about basic life needs, such as employment and access to housing. This is because I am a protected citizen in Minnesota. I can only imagine how many other young college graduates and professionals feel the same as I do. These include not only individuals who are gay, lesbian, bisexual, and transgender, but also those who are straight allies and do not want to live in a state where diversity is not encouraged and equality is not embraced.

I have experienced firsthand the effects of discrimination in North Dakota. I had gotten a new job and within the first few hours of employment I was outed to co-workers by management. I did not feel this was appropriate and it certainly had nothing to do with my work ability. I did not feel I was not able to file a complaint because I was not a protected class. Instead, the effects of that day stayed with me as I quit four hours after I began working there. I wondered if I would encounter similar situations at other places I applied to or worked at in Fargo. I wondered if companies like this one would ever have to be accountable for their actions one day.

This is why it is so important that you support this bill. With your support for this bill, we can bring our state one step closer to being the fair and welcoming place.

Sincerely,

Eli Westerfield  
419 Roberts St Apt 3  
Fargo, ND 58102

Senate Judiciary Committee,

My name is Keleah Stull and I believe that every human being, straight or gay, deserves their fair rights. I am heterosexual, married and have a child. My child is going to grow up knowing that every person is equal. Whether it be sexual orientation, race, religious views, and anything else that may make an individual different from everyone else. Regardless of any laws that are passed or not. My parents taught me that it doesn't matter who you are, where you're from, what color you are and if you believe in god or not, everyone deserves the same respect and rights as I have.

My parents were both born and raised in a small town in North Dakota. I was born in that same small town. I lived in WA for the first few years of my life and learned these things from my parents and will gladly and proudly pass these lessons onto my children and hope that they will pass them onto their children one day, even if there still is a battle over equal rights for people of a different sexual orientation.

I have friends, both male and female, that are gay and lesbian. I don't accept the fact that they are being discriminated against on the job site and in other places because of their choices and lifestyle. It is wrong. I'd like to see them have the same rights and chances that I've had and that people before me have had.

In closing, I thank you for your time and hope that my children will have the chance to grow up and not be judged for their sexual orientation.

Keleah Stull

Honorable members of North Dakota Government, Senate Judiciary Committee Members:

My name is Colleen Whitaker, I am a Native North Dakotan, born in Bismarck and spent much of my growing up years on the family farm in Eastern North Dakota. I am also a concerned citizen for my home state and a member of the North Dakota Human Rights Coalition. My family and I are also directly affected by the outcome of this bill before you. I currently reside out of state but consider ND my home, and will return one day. The reason why I participate with a Human Rights group in one state and live in another is because I found out first hand what happens when people know I'm GLBT in North Dakota. I can live productively and work in one place (Oregon or New York), making it possible for me to work for positive change in another (North Dakota) which I will always consider my home.

I would like to tell you a little about my family and I. It is a story that is similar to many others who have left their homes in North Dakota yet it is unique. And I want to convey something to you and your colleagues in Bismarck that I think is vitally important for you to hear and for all the people of North Dakota. I would like to express something that strikes at the heart of why we are here with this bill before you.

The subject of having to move from North Dakota to avoid discrimination is directly related to why I am writing this to you from out of state and not living there today. The importance of this bill cannot be underemphasized for a large group of people in the state and many that would still be living in our state if only they had adequate protections, equal protections with others in the state. I cannot make a living in North Dakota, cannot get adequate medical care and cannot secure housing in some cases because when people there find out I am transsexual I am denied these things. To some this is perceived as right, and there is no adequate law preventing this from happening or conveying anything different. So the importance of this bill for North Dakota as a whole, economically as well as from a standpoint of humanity is critical.

Eight years ago, my family and I (fourth and fifth generation North Dakotans) had to leave our home, were bankrupted and forced to splinter and move away from one another. Why? Because in North Dakota the company I worked for could legally fire me when they found out I was GLBT. And the ND community we lived in could legally deny us services because I am GLBT. We each had to find our own way and Mindy, Lawrence and Crystal had to move and go in the closet in order to live there, because I am GLBT. Churches in our town and elsewhere preached sermons denouncing us because I am GLBT. I am a Christian and this was especially distasteful because of my personal relationship with God, my Christian upbringing and I know God is about love, not hate. My company who I was loyal to and who had recently given me promotions summarily fired me. To my face they told me flat out it was because I am transsexual, but they said that wouldn't be what they would say in print. I had to move out of state to secure employment and support my family the best I could. It was a hard road but I succeeded.

Then I came back to North Dakota 5 years ago and worked with a man to start one of the most successful businesses in the County in years. We sold to out of state vendors and did not have to rely on North Dakota interests for our income, but we brought plenty of income and jobs to North Dakota. Why did I encourage this man to do business in North Dakota? Because it is my home and I wanted to live there. But Rick found it hard if not impossible to work with the local banks, with the Empowerment zone and with other business entities there. We had to go into Minnesota for a lot of this. Why? Because, according to some very candid community leaders, I am GLBT. So over two years ago I moved again, this time to New York. However, Rick and his family stayed and the business remains as a profitable enterprise in North Dakota.

It is interesting how I could live as a productive citizen and successfully perform my duties as the City of New York's water system Risk Manager where I help secure the water system, oversee engineers and carry out multi billion dollar projects for a city of almost 9 million. Yet in the eyes of many in my own home community of ND my contributions weren't worthy to be accepted there. I started hearing things from back home like "Colleen is only ok there because

NY is such a big place, etc. In 2008, due to a family emergency, I moved to an Eastern Oregon town about the size of Jamestown. I am a country girl at heart and this area reminds me of my home, North Dakota. I am currently performing the same kind of engineering for the same kind of firm as I worked for in ND and am well regarded here. The people here are your typical small town salt of the earth people, God fearing and looking out for your neighbor. They have welcomed me into their community and I contribute here productively as well. Unfortunately I was not allowed to make the same contribution in North Dakota. Neither are a lot of other people like me, simply because they are GLBT.

One point that you are all well aware of: Oregon and New York are not losing their populations, in fact their economies are growing substantially with an influx of new and diverse people from all walks of life. Both states have GLBT statutes in place. With the current political / societal climate in this country what it is, I know it is more important now, than ever to work for human rights on all levels. In North Dakota the challenges are similar in many respects, different in others but what is important and basic rights that are equal for all citizens remains the same. I am optimistic that we can overcome the challenges we face in North Dakota and eventually make the state even a better place to live, a place where people move to rather than away from. And a place where my family, myself and those like me can move to, contribute positively and live productively. I still own property and other interests in North Dakota, have family and friends there and certainly would rather live back home than in Oregon or New York. North Dakota is my home and I intend to move back when I can live there and not be legally discriminated against. It is the only reason I am not there now. It is the reason I moved away and I am confident that we can start to change this with SB2278 before you.

Thank You,

Colleen Whitaker  
541 805 1639

# Petition: Add Sexual Orientation & Gender Identity as a Protected Class in North Dakota

## Action Petitioned For:

We, the undersigned, support fairness for all North Dakotans and believe gay, lesbian, bisexual and transgender citizens should have the opportunity to live and work without discrimination. We urge you to pass legislation to add sexual orientation as a protected class in North Dakota.

Printed Name	Signature	Address	Email	Phone #	Comment	Date
Heather Minnick		1208 S Wagon Frontier 58554	hminnick@frontier.com	701-301-9758		12/13/13
Lisa Warner		2500 Centennial Rd #203 Bismarck	lwarner@nd.gov	701-527-5736		12/13
Robertan Muller		1129 N 18th St	robertanmuller@earthlink.com	701-288-7188		12/13
Tammy Shaff		507 4th Ave Mandan ND	shafftamcel@mandan.com	701 663 3715		"
Elizabeth Loggren		507 4th Ave NW Mandan ND		701 426 9377		"
Tiffany Hardy		5100 131st Avenue Wells Fargo ND 58701	tjhardy@ndcentral.com	701-770-8524		"
Robert Mitzel		1017 N 14th St Bismarck ND 58505	amster_r@jhsos.com	701-226-2381		"
Michael Montoya		1017 N 14th St Bismarck ND 58501		701-426-7904		"
Cassey Parodies		2801 Building D Citi ND 58203	angel-rentlead@netmail.com	701-570-3061		"
Chris Stonor		1025 Senior of Ave Grand Forks ND	janessa.jay@netmail.com	701-741-3716		"
Mark J. Olson		1119 University Bismarck ND	Mark@mandmsplace.com	701-214-7891		"
Don Telesh		305 1st Avenue Mandan ND	telesh@yaho.com	701-425-2053		"

17 sheets turned in with signatures - we kept just this one as a sample

**SR-14-09**  
**Regarding Senate Bill 2278**

*Whereas*, North Dakota State University is an equal opportunity institution that currently supports the protection of sexual orientation and gender identity within the workplace and housing under the NDSU Equal Opportunity Policy, and

*Whereas*, Student Government is a student organization bound to the NDSU Equal Opportunity Policy which states, "NDSU will sponsor and assist only those student organizations that do not discriminate on the basis of race, color, national origin, religion, sex, disability, age, Vietnam Era veteran's status or sexual orientation in their membership practices and activities," and

*Whereas*, the impacts of aforementioned legislation will have a considerable effect on the students, faculty, staff and families who are members of the NDSU community in terms of housing and employment

*Therefore let it be resolved*, that Student Government supports ND SB 2278 under the premise of equal rights and opportunity for all North Dakotans.

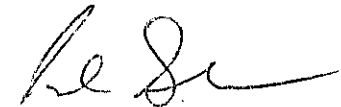
**Respectfully submitted,**



**Christopher D. Hart**  
Men's Low-Rise Senator



**Nicholas Citz**  
Off-Campus Senator



**Paul Gunderson**  
College of Business Senator



**Leah Eggers**  
Off-Campus Senator

Passed 2/1/2009  
Vote: 21-2-1

Mr. Chairman and honorable members of the committee, my name is Jason Lawrence and I am from Bismarck. I urge you to support SB 2278.

I am here today for the sake of the state that I love and that I have been raised in since I was a young child. Each year, countless talented and intelligent young men and women from across the state leave their homes and families to pursue their education and future careers elsewhere – and never return. In a time of economic uncertainty, this is alarming and discomfoting news for any North Dakotan. Although the reasons are many, for some it is terribly simple – the law offers no protection from the discrimination against GLBT individuals that is sadly too common in North Dakota. In a state where job and housing security is non-existent for many, these individuals are forced to seek employment and find homes elsewhere – and the benefits which these people have to offer their state and communities disappear along with them.

Inscribed in our state's coat of arms are the profound words "strength from the soil." The early settlers of this land did indeed draw their sustenance from the ground – but not alone. Liberty and union, now and forever, one and inseparable; our state's motto proclaims the fellowship and camaraderie that created it, and it is only by adhering to these principles of inclusion and inter-dependence that North Dakotan can follow the example of its industrious founders and so achieve its fullest potential. This future must include everyone, regardless of who they are or whom they love.

I am proud of North Dakota and look forward to some day giving back to the state that has given me so much, but in order for me to do so, I ask that you support SB 2278. I ask that you allow me, as well as all members of the GLBT community, to live and work securely in North Dakota – free from discrimination and prejudice – so that we, like those



before us, may contribute to our great state together. My hand, as well as the hands of countless others, are open and willing to help our fellow citizens to fulfill North Dakota's destiny as a state of great opportunity and prosperity for all, that we may some day truly be "one and inseparable." For the future of North Dakota, I ask that you accept your citizens' offer.

*Same given  
to House.*

Good morning Committee Members. My name is Susanna Magstadt, I am a 34 yr old lesbian and mother of 3. I have resided in North Dakota all my life. I am here today to ask for your support in adding sexual orientation to the North Dakota Century Code. I came out about 6 years ago to my family and my now ex husband whom I was married to for 12yrs, which was a hard choice to make because I knew I would face a difficult life from that point on. I have worked jobs that I absolutely loved but had to leave because of the discrimination and possible job loss I faced when confronted about my sexual orientation. I am currently working a job that I do not like because I have some protection in that company's discrimination policies, which are actually enforced. Regardless of my employer's non-discrimination policy, I can be fired for being who I am. I can be denied a home loan, or even be refused an apartment because gay, lesbian, bisexual, and transgendered people are not included in our State's Century Code.

The current code does not protect me or other members of my community from losing our jobs. There are certain businesses in town that will not even give me a job application because I am a well known member of the gay community. Nobody should be denied a good paying job because of who they chose to spend thier life with. Some of us are Doctors, Lawyers, Teachers, Ministers, State and Federal employees, but many of us hide our personal lives to stay in these positions.

About two years ago, I was employed as a housekeeper while I was attending college. The company I worked for had a non-discrimination policy that included sexual orientation. Unfourtanly, it was poorly enforced. When my direct supervisor found out about my lifestyle, my work was criticized where it had been praised only weeks before. I would arrive for work only to be told they didn't need me that day. I

would return for my next scheduled shift and find that I had been written up for not showing up for work the shift before. I left that position when it became unbearable for me to work there. It took me a full 6 weeks to find other employment.

I teach my children to not discriminate against anyone; black, white, native american, asian, straight or gay. I am one of the lucky few who has a very supportive family, including my ex-husband. He is here today to stand behind the GBLT community.

My life with my partner is really not much different than yours. We take the kids to school, go to work, pay our bills and do what we can for our neighbors. We are a family, just like you. We struggle to raise our kids to be upstanding citizens. I understand that we do not have what some people would call a "traditional" family. We have no security in knowing that if people know about us and it gets back to our co workers and bosses that we could be handed a pink slip and told to go home. I pay my taxes, abide by the laws, and contribute to the community as much as I can. Yet I am being denied rights that other North Dakota citizens have. It is a time for change. Change things for me and the other members of the gay community. We seek equality in life, and in our workplaces. Please take in consideration adding sexual orientation to the current Century Code, help me safeguard my family from the discrimination that we have already been shown.

Thank you.

Greetings- to my fellow hard working citizens. I want to begin by expressing my gratitude to you, our state's leaders. I know your job is not an easy one, and is a position often highly criticized by those that just don't like you. As your sister, your daughter, your aunt, your neighbor, your friend, I just want to begin by saying that I, despite any differences, I appreciate you and the work you do.

Funny, I can relate to tough jobs. I've lived in ND most of my life, even served my country, my church, and my community. I was a mentor with teens teaching aids, a co-chair of youth leadership with the Fargo Chamber of Commerce, I started a student bible study at Fargo North High and was a leader for 3 yrs. I was a confirmation teacher for many years, your child may have been in my class, I sang on a worship team for over 6 yrs, I was an ESL tutor. I've worked with Somali and Bosnian refugees, Korean, Swedish, Norwegian, and German exchange students as well as my peers. I was national merit scholar, I graduated top of my class, served on student council, as drama president, and as a student mentor. I volunteered at Rosewood on Broadway for many years, a nursing home in Fargo. I've volunteered for Hospice, for the Salvation Army Food pantry, the Dorothy Day house and even sandbagging. All because my friends and I were taught that this is how citizens of ND live. We help each other. I've taught fitness classes from cardio to yoga to personal training for over 10 years. You may have seen me perform, I sing, I dance, I play piano, I've acted on stage and in independent films. I've placed and received various superior ratings in local, state and international competitions. Sometimes the only thing people knew about ND was the movie Fargo. I've been proud to represent as a citizen of ND and prove that we are different than the characters of the movie. I am proud because people in ND are talented, hardworking people of integrity. I am a lesbian, I have a partner and 2 children whom I love dearly.

If I were applying for a job—would the last sentence give you a sour feeling? Did I sound like an employable person until the last sentence? I could give you a resume of noteworthy work experience, referrals that praise my superior work experience, so tell me why was I fired 2 weeks ago because of the woman I've love? Tell me what to tell our two children when they ask why mom was fired from her job? How do I explain to an 8 and 11 year old that their mother was fired because my boss didn't feel comfortable with me loving their mother? We are not so unlike any other family, we share the same joys, the same sorrows. We eat, sleep, poop and pay taxes, really we are not that exciting. What you need to know is that my story is all too common. Everyone in this room knows and loves someone who is gay; they just might not be wearing a sign on their sleeve to tell you so. I am your sister, your daughter, your aunt, your neighbor. I am a lesbian. Don't we, the GLBT community of ND deserve to be treated equal under the law? I am confident as a proud citizen of ND that we will continue to stand for equality—despite of any differences—and that this bill will pass. It will pass to protect your sister, your daughter, your aunt your neighbor, your brother, your son, your uncle, your nieces and nephews, your neighbors, your co-workers, and your friends.

Sarah Laducer



HUMAN RELATIONS COMMISSION

200 North 3<sup>rd</sup> Street

Fargo, ND 58102

Phone: (701) 241-1474

Fax: (701) 41-1526

Email: [planning@cityoffargo.com](mailto:planning@cityoffargo.com)

[www.cityoffargo.com](http://www.cityoffargo.com)

February 2<sup>nd</sup>, 2009

Dear Senator Nething and Members of the Senate Judiciary Committee,

I am writing on behalf of the Fargo Human Relations Commission to encourage support of Senate Bill 2278, which seeks to amend the North Dakota State Human Rights Act and Fair Housing Act to include sexual orientation and gender identity as a protected class. If passed, it will prohibit discrimination in housing, employment, credit transactions and use of public accommodation. The Fargo City Commission voted to support the bill on January 26<sup>th</sup>, 2008, and considers it important that our State extend these human rights to all citizens of the State of North Dakota.

Many States in the Nation have already passed legislation prohibiting discrimination based on sexual orientation. The Fargo Human Relations Commission currently includes the class of sexual orientation in their Ordinance of Creation (Article 15-0201). Major employers and leaders in ND business, such as the North Dakota University System, Meritcare and Microsoft include sexual orientation as a protected class in their anti-discrimination policies.

Your support for SB 2278 is greatly appreciated.

Sincerely,



Prairie Rose, Chair  
Fargo Human Relations Commission

North Dakota State Senate, Judicial Committee

Testimony in support of S.B. 2278

February 3<sup>rd</sup>, 2009

Nathan Stratton, Bismarck ND

*Same  
given to  
House.*

Mr. Chairman, members of the committee:

My name is Nathan Stratton and I moved from the Twin Cities to Bismarck eighteen months ago to accept the position of Director of Financial Aid at United Tribes Technical College. I am from Pennsylvania and had never lived in North Dakota prior to 2007. My employer, as a matter of policy, does not discriminate on the basis of sexual orientation. I would not have moved to North Dakota had that not been the case.

It is evident in your legislative priorities and equally evident in the classified ads that economic development requires a level playing field to competitively recruit workers from surrounding states. Initiatives in the Governor's proposed budget such as wage increases for state employees and higher levels of tuition assistance demonstrate that this is a priority which the state wishes not only to support in principle but to fund. This legislation before you would also contribute to those goals and do so at no cost to the state.

As a new North Dakotan, I contribute to this state through civic involvement, paying taxes and spending money here. By working in a non-profit organization, I participate in a sector which generates an economic impact in the area that far outstrips the resources that fund it. The contribution of other gays and lesbians to the state and its economy deserves enough recognition to at least provide the modicum of security that their sexual orientation will not be grounds for their termination.

In many companies, failure to provide protection from discrimination is not a matter of intended bigotry, but rather a matter of simply unconsidered policies. Similarly, exclusion of the GLBT community from the state's human rights laws does not necessarily indicate a disregard for the condition of gay and lesbian citizens. But regardless of intent, these omissions have placed a "Help Un-wanted" sign on our state at a time when we cannot afford it. This legislation will help eliminate that barrier and benefit the work of numerous human resources professionals and state employees who seek to recruit people to work in North Dakota.

I ask that you send this bill to the senate with a Do Pass recommendation. The only cost to the state is the revenue lost if it fails.

# Senate Bill 2278

Judicial committee Senators

*Same given to House.*

Let me introduce myself, I am Dan Tokach the current President of Dakota OutRight a non profit resource for gay lesbian bisexual and Tran gendered (GLBT) people and their allies in North Dakota, I am here today to tell you a story that is not at all uncommon for a lot of gay men and women in ND. I graduated from high school in the late seventies. At the time I already knew that I was a gay man but because of the pressure that society placed on me in thinking that if I revealed the real me, I would be ridiculed and discriminated in my future life. At the time I felt that if society was placing this undo pressure on me and maybe other folk like me that it must be "wrong". I did what I now know was the wrong thing and tried to overcome my homosexual life and try to live as a straight heterosexual man. I married in my mid twenties, my wife Julie and I had a son. In the years that I was married I realized that I was not happy and started trying to deal with getting my life together. I realized that I could no longer hide my sexuality and had to end a sixteen year marriage. It was devastating to my former wife who I truly respect to this day and the way of life that she and my son should have expected. She had to deal with the loss of a husband and the life that we tried to start for our future. Since than I have been a driving force in making many men and women realize that it is not a sickness and living a life of false pretense is not fair to the people that we love. It affects our family and friends in ways that we can not repair. It also damages the life that we have built in our churches and communities. I feel that today with the internet, things are changing in the world in making men and women realize that we are not alone and that there are other people like us in the world. But this does not stop the fear of being an out GLBT person. There still is the fear of being fired from the jobs that we work so hard at and we are also afraid that we can be denied fair housing. If it was possible to change the scope of the Human Rights Act in North Dakota it would start a way of life that would make people proud of who they are and would maybe stop a lot of my GLBT friends from thinking that they would have to sooner or later move out of North Dakota to places that are more tolerant of Gays and Lesbians so they can be happy and be able to hold the jobs they choose. I feel that with the lack of equal rights in our constitution that there is a huge out migration of our brightest people in a state where we can not afford to loose any more worthwhile people. I urge you to pass this bill and start a change that will make North Dakotans proud to say that "WE LOVE NORTH DAKOTA"

Thank you and God Bless Dan Tokach /President Dakota OutRight / Chair District 34  
Dems Mandan

*Dan Tokach*

*2/3/09*

Mr. Chairman, and members of the committee, my name is Ron Hildahl from Mandan. I moved to North Dakota eight years ago to serve as a pastor of two churches. I was enjoying my career and came to appreciate the landscape and the people of the area. After one year of living here, I came out to myself as a gay man and began a dating relationship with my partner, Dan Tokach. Within that particular church denomination, I could be gay and serve as a pastor but I could not be in a same-gender relationship. As a result of my relationship, I was then asked to resign from my position and the denomination. What I found most hurtful, unfair, and unjust was the fact that one day I was more than qualified to perform my job but upon revealing my same-gender relationship, it appeared that suddenly I was no longer fit to keep my job. My skills, education, and work experience hadn't changed. None of that seemed to matter. It was as if someone had pulled the rug out from under my feet.

I know firsthand the harsh and painful reality of losing a job because of my sexual orientation. I wish I could say that I was the only one to have had that experience. Unfortunately I am not alone. I am here today to speak on my behalf and to be a voice for those in the gay, lesbian, bisexual and transgender (GLBT) community who cannot speak for themselves.

My partner and I have been leaders in the GLBT community in this part of the state over the past six years. In that capacity, I have heard countless stories from individuals from every corner of our state who share the same fear of losing their job if someone found out their sexual orientation or gender identity. This real and legitimate fear keeps many people closeted. It also causes others to leave our state for areas that offer protections for ALL people.

About four years ago I attended a forum in Bismarck with pastors and church leaders. I took the opportunity to share the story of my coming out and my resignation in front of the entire group. In the discussion that followed, one gentleman stood up in front of everyone and said to me, "There are other places that will take you. Why don't you go where they'll take you?!" Wow! No one, no matter where they work or where they live should ever have to hear those words, "Why don't you go where they'll take you?!"

North Dakota is where I choose to be at this point in my life. North Dakota is where many others who are gay, lesbian, bisexual, and transgender choose to be. No one - not our parent, not our sister, not our uncle, not our cousin, not our child, not our neighbor - no one should be forced from their job or housing because of their sexual orientation or gender identity. This legislation is about being fair, about offering equal opportunities for ALL North Dakotans.

I now serve as a pastor in a denomination that values who I am and offers me the opportunity to use my skills, education, and God-given gifts. Passing this legislation helps to ensure that every person can be valued for who they are.



Senate Judiciary Committee  
Testimony on SB2278  
February 3, 2009

Mr. Chairman, members of the committee, my name is Wayne Kutzer, I reside at 1959 Thompson Street in Bismarck.

I wholeheartedly support SB 2278, which is all about fairness, ...equal treatment, ...civil rights. It's unfortunate that we have to have legislation that protects individuals just for who they are, but I am also a realist and know that this piece of legislation is not only needed, it is the right thing to do. This is basic civil rights.

Adding sexual orientation to the language in each of these sections of anti discrimination law also sends a statement that we value people, just as when we say you can't discriminate on the basis of race, ethnicity, religion, sex, and all the others that are listed in law. Discriminatory practices of any kind are rooted in fear and ignorance, discrimination based on sexual orientation is no exception.

I am sure you will hear of statistics that nearly one half of the states and many individual cities, as well as the federal government, already have similar laws protecting those whose sexual orientation is different, but this law is about North Dakota – how we as a state value individuals, it will help to create that “quality of place” in our state, that is open to diversity, and one that is serious about protecting the rights of everyone.

Mr. Chairman, members of the committee this bill is the right thing to do. If there ever was a classic “No Brainer” this bill is it. Equal rights and equal protection is something that we must stand for. I strongly recommend a do pass on SB 2278 and would be glad to answer any questions that you may have.

Chairman Nething and Members of the Senate Judiciary Committee:

*Same given to House.*

My name is Kristin Kitko, and I live in Bismarck, North Dakota.

I understand that bills and resolutions are about numbers: Is there a need for this piece of legislation? Why should we discuss what is presented in this document? Does it affect anyone? Is it worth our time and money?

And that is the catch here with Senate Bill 2278. If someone thinks that he has been fired simply because it is known or perceived that he is gay or transgendered or whatever, where does that person go to report it? Very few people on the state level have shown to care. What department does he report to? Who does he file the paperwork with? On the State level, there is no paperwork to file, no department to report to, and therefore, no numbers to manipulate or study.

And then—what has he done? He has “outed” himself to the state of North Dakota. For what purpose? According to current laws, it is legal to fire someone or kick him out of his home if he is gay or is perceived to be gay. So, in other words, if he is fired for this reason and finds someone to report it to, he will be told, basically, “So what? No one has broken the law.” “Outing” oneself can be a dangerous thing to do; studies across the nation point to the fact that people who are gay or who are perceived as gay are often harassed, beaten, and in some cases, killed. I’m not suggesting that if a person comes out in North Dakota, he or she will be killed; but I am saying that there is danger, and no one wants to live afraid. Therefore, no one really wants to expose himself or herself to that potential danger if nothing is going to come of it, anyway.

This is a tricky situation. So where does the state get the “numbers” you need to justify this hearing, to justify this bill, to justify making these changes? You get them by listening to the people who are telling you that there is a need for this legislation, this bill, these changes. That’s all you’ve got, and you’ve got to believe them, believe us. People who are not directly affected by this issue are in the majority, and so they don’t, more than likely, understand the need for this protection. But that doesn’t mean that it’s not needed for a large number of the people in the state in which you are a senator.

According to the 2000 census, African American people make up .6% of the population of North Dakota. Yet they are protected from the types of discrimination presented in this bill. It’s not about quantity when it comes to justice, fairness, and equality.

If you have a problem with gay people for religious reasons, I’d like to respectfully remind you that there is separation of church and state. The church also declared that black people did not have souls, that women did not have souls, that people who eat shrimp will go to hell, and that wearing mixed fabrics will also send you to burn for eternity. At that rate, I will see most of the people in this room in more tropical climes someday. Let us remember the importance of and reasons for that separation.

I urge you, members of the committee, to say “Yes” to Senate Bill 2278. Thank you for hearing my testimony.

February 1, 2009

To Whom It May Concern:

Rarely have I been compelled to step out of the quiet life I lead and make my presence known to a broader audience. That is, until now. You see, I have a vested interest in seeing the current Senate bill you are debating today passed. Let me elaborate.

My name is Sue Thoreson, and I've been a North Dakota resident for most of my 49 years. I am a former teacher, a devoted wife, and an extremely proud mother of four beautiful children – three sons and one daughter, ages 24 to 13. All of my children were born healthy and have continued to thrive through the years. With each new birth, I was given the opportunity to dream for that child. My dreams were fairly simple – I wanted them to be happy and hoped life would treat them kindly; I wanted them to find a special someone with whom they could share love and old age; and (with no apologies), I wanted grandchildren. Perhaps I should clarify and change the tense to “want”. These are things I still want for my children, but recent family circumstances and the current political climate in which we find ourselves have changed my dreams dramatically.

About seven years ago, our oldest son, Ryan, “came out” to our family. While not surprising to many people, it was the last thing I expected him to share and was, quite frankly, devastated by the news. Not for reasons you might assume, though. I was filled with fear for my child. Being openly gay, I knew he had just ventured into a different world. In an eye blink, he went from being a member of the dominant social class of white males, with all the rights and privileges thereof, to a minority group with virtually no protected civil or personal rights. Hate and discrimination are now two concepts with which we have become all too familiar. If you ask anyone who knows him well, Ryan is worth your time. He is an exceptionally bright, socially-just, human being; spirited and kind-hearted. At the young age of 24, he has already made his mark in a number of areas. Locally, he is a past recipient of Fargo's Human Rights award. Upon graduation from Harvard University, he was awarded a Rhodes' scholarship and is currently completing graduate studies in Social Anthropology. Long-term goals include law school, with emphasis in the area of human rights. He has always been, and continues to be, extremely socially-conscious. I have no doubt, whatsoever, about the impact he will have on any community in which he chooses to live. Sadly for us, neither Fargo nor North Dakota will be that place. One reason for college on the East Coast was the experience of living in a community of acceptance. A comment he made shortly after arriving at Harvard was both wonderful and sad, at the same time. I told him it was so nice hearing “happy” in his voice, and his response was, “Mom, for the first time in a long time, I feel like I can breathe. It's so great here!” His being gay was such a non-issue, he was able to move through his days focusing on whatever business was at hand. He felt very little discrimination and found a community willing to take him on face value. As a parent, I was comforted by this, and found myself dreaming those big dreams again. Perhaps he will experience opportunity, find love, live happy.

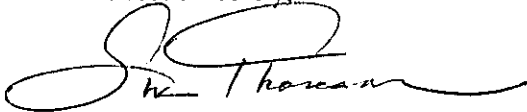
Enter David. A year (almost to the day) after Ryan's news, our second son, David, shared that he was also gay. After having just “recovered”, if you will, from Ryan's announcement, this proved to be an even greater trial for me. Those initial feelings of helplessness and

despair caught up with me again and held me in a strangle hold. Now the ugliness that is often associated with society's response to the gay community was going to be able to reach another one of my children. It was a difficult time, indeed. Fortunately, David is a great deal like Ryan, in many ways. He is exceptionally bright, articulate, and artistic. He was a nationally-ranked, fierce debater in high school, and earned stellar marks academically – good enough that he, too, left Fargo to attend Harvard University – graduating with honors in English and American Literature. He has since moved to New York and is employed with a company that provides him with an exceptional salary and personal benefits not offered in many other areas of the country. He, too, is living in a community where his “gayness” is a non-issue. For these and many other reasons, I don't ever see him returning to live in this part of the country.

I know Ryan and David are not a unique case. Our family, and so many others in North Dakota, are living the gay experience through our beloved children. It's extremely difficult to raise these children, nurture their talents, then watch as they quietly leave for more accepting, loving communities. It saddens me that we are having to create a Senate bill to address the issue of protection from discrimination. I'm disheartened that, as an intelligent population, we are finding the need to dissect the issue of basic rights for our gay brothers and sisters. What can I offer as a solution? I believe the passing of this bill will be a good beginning. Let's provide all people in our state with the protections they deserve by virtue of their birth – gay or straight. Give our children a community that responds to their needs with compassion, intelligence, quality services and benefits, and the freedom to be what God created them to be. Perhaps then, we'll find ourselves graced with their talents as we retain their presence here at home.

Thank you for the opportunity to relate my thoughts regarding the Senate bill at hand. By sharing with you, I've given voice to the numerous North Dakota families who feel as I do. On their behalf and mine, I urge you to vote with compassion and integrity.

Most sincerely,

A handwritten signature in black ink, appearing to read "Sue Thoreson". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Sue Thoreson  
Fargo, ND

Mr. Chairman and members of the committee, my name is Joe Heilman, NDSU Student Body President. I grew up on a farm south of Rugby, ND and am pursuing my 5<sup>th</sup> year of undergraduate study in Business Administration. My sincerest apologies for my absence this morning as I had classes that required my presence. I hope to visit with you all soon.

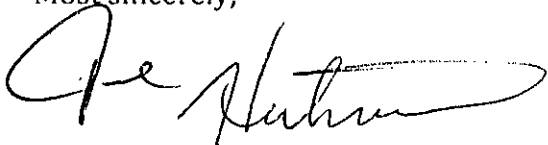
On behalf of the NDSU Student Government, we would like to offer our support for SB 2278. On Sunday, February 1<sup>st</sup>, the NDSU Student Senate passed a resolution (Attachment 1) in support of this bill.

As our institution continues to grow, we are attracting many different people that help enrich our educational experience. It is important that we can provide all our students equal opportunities as they acquire an education here in ND. Discrimination could directly impact a student's opportunities for housing, employment or internships, and future opportunities to succeed. Passage of this bill would help ensure equal opportunity and a welcoming environment for the students at NDSU.

As common practice, NDSU student organization leaders (over 1,100 positions) sign agreements for equal opportunity and non-discrimination, including sexual orientation. This bill would help many of our students acquire an equal playing field as they become members of our community and state.

Please feel free to contact me if you have any further questions.

Most sincerely,



Joe Heilman  
NDSU Student Body President, 2008-2009

Dear Committee Members,

Good morning and thank you for giving me the opportunity to share my thoughts regarding the bill being introduced in the North Dakota legislature.

My name is Maren Ortmeier and I am a "straight" mother of two children who attend Fargo Catholic Schools. I have been married to my soul mate (Tom) for 17 years. I am a cradle Catholic. My faith is very important to me and truly helps define who I am and how I live. This letter will be a surprise to many who know me in my faith surroundings, as I am officially "coming out the closet" with this letter.

I can be silent no more about the incompleteness of being pro-life within our faith communities. While I consider myself to be pro-life and seek the beauty in all life (e.g. the unborn, the poor, the mentally and physically disabled, and the refugee) I am confused how we as Christians fail to see the same life worth in our GLBT (gay, lesbian, bisexual and transgender) family, friends & neighbors – or at least feel afraid to stand up and voice it.

I have stood in front of the Women's clinic with my "Choose Life" sign, yet I am told the GLBT should not have the same rights and dignities that are afforded to every other person. The fact that I am attracted to the opposite sex is not, I hope, my most defining characteristic. I hope it is my compassion for my neighbor.

Why do we put so much emphasis on this one trait and allow discrimination to occur on this trait alone? We are to protect every life as sacred, but if a person happens to be gay, we believe we have the prerogative to dismiss them from their employment, throw them out of their apartment or home, or deny them a seat at a restaurant table?

There has been a bill introduced in the North Dakota legislature that will help provide equality for all, and your support of it should not depend on whether you personally believe homosexuality is right or wrong. It is simply about justice and dignity. It prevents discrimination in the workplace, housing, and other life issues. This bill is NOT about gay marriage. It is about protecting all life and the opportunities afforded to life, regardless of whether that life is straight or gay.

I proudly display my Catholic Charities bumper sticker that says, "If you want peace, work for justice". I ask you to listen to that voice inside of you that says this kind of discrimination is not living by the Golden Rule, to love our neighbors as ourselves. It is in the struggles and successes of other spiritual greats that we follow, like Dorothy Day, Gandhi, Martin Luther King Jr, and St Francis of Assisi, that we challenge the status quo in the name of love.

As a friend said to me the other day, "I just imagine if it were my own child, would I defend him and fight for his rights? You bet I would!" The closest example we have of God's love for each of us is the unconditional and furiously protective love we have for our children. For parents that are blessed with the opportunity to find God's beauty in children that fall outside of society's norm, they ask others to see the beauty in the life that God has given. This lack of defending dignity and love is what is flawed in "the right to abortion" as well as the religious' condemnation of someone's homosexual child.

While I fully am prepared to have my faith questioned from those who claim to be "devout" Christians/Catholics, I hope it can be an invitation for those who feel as I do to "come out of the closet" themselves and speak up! I lay myself and my reputation on the line in order for healthy discussions to begin. I am only trying to live up to the words on my bumper sticker; therefore I am silent NO MORE!

Maren Ortmeier

7702 25<sup>th</sup> Ave S

Fargo ND 58103

*Same given  
to House.*

February 2, 2009

Dear Chairman Nething:

Having lived in North Dakota for most of my life, I am incredibly invested in this great state. This place that I've called home for over 20 years has given me immense opportunity and provided me with a positive environment for which to grow and learn.

While I have many positive feelings toward North Dakota, I am also keenly aware of the inequalities that have been cast into the shadows for so long in this state. I grew up believing that individuals should be judged based on merit and work ethic, however, I find the structure of this state set up to judge fellow citizens based on a component of their identity for which they have no control: sexual orientation or gender identity. Not only did I grow up believing all should be equal, but my graduate education at North Dakota State University has solidified my conviction that ALL citizens of this great state should have the opportunity to retain a home and their job, regardless of their identification as gay, lesbian, bisexual, or transgender (GLBT).

It is easy to perceive that I am simply regurgitating information presented to me in the classroom, but this could not be further from the truth. I have invested myself in the mission to seek equality for my peers who have been negatively affected by lax efforts to get this critical piece of legislation passed into law.

Many of the members of the GLBT community have dramatically, and positively, impacted my life, providing me with more insight than I could ever have hoped to gain in my own life experiences. These individuals are my friends, my chosen family who have supported me and my endeavors as much as I have engaged in theirs. The fact that the state I currently call home does not recognize these individuals as rightful members of society is something I simply can not ignore. My rights and liberties are bound with those closest to me; I can no longer stand idly and disregard this injustice. I choose to use my voice, as an ally, a friend, an individual, to strongly urge you to support SB 2278. We have the opportunity to come together and support one another, and for this reason I ask that you do the right thing, the North Dakotan thing, and embrace the individuals who contribute to the progress of the state.

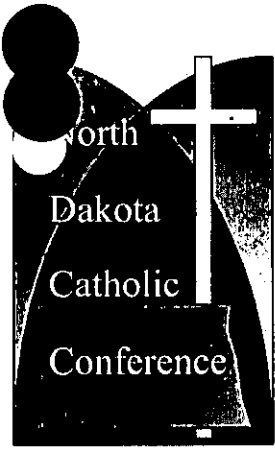
Sincerely,



Angela Mathers

DP

Christopher Dodson



Representing the Diocese of Fargo and the Diocese of Bismarck

Christopher T. Dodson  
Executive Director and  
General Counsel

To: Senate Judiciary Committee  
From: Christopher T. Dodson, Executive Director  
Subject: Senate Bill 2278  
Date: February 3, 2009

The Catholic Church affirms the God-given dignity of every human life and rejects unjust discrimination. Acts of violence, degradation, or diminishment toward any human person, including anyone with a homosexual inclination, are contrary to the teachings of the Catholic Church.

There is no place for arbitrary discrimination and prejudice against a person because of sexual attraction. We especially deplore violence and harassment directed against such persons. Moreover, all human persons, including those with homosexual inclinations, have a right to obtain employment and housing.

We recognize that some people have a same sex attraction. This tendency is not in itself immoral or sinful. However, like all sexual activity outside of marriage, homosexual activity, as distinguished from homosexual tendency, is morally wrong. A corollary of this teaching of the Church is that patterns of life, sometimes referred to as "lifestyles," that encourage or normalize immoral behavior are also morally objectionable. This is particularly true of those patterns that encourage, promote, or advocate sexual activity outside of marriage.

Based on these principles, we cannot support SB 2278. The unique legal status granted by the bill's definition of sexual orientation appears to encompass not only homosexual inclinations, but also other sexual activities, homosexual or heterosexual, outside of marriage. Civil rights categories should not be used to cover a particular group's activities, especially when those activities are morally objectionable.

We also feel that it is our duty to point out that SB 2278 provides no protection to employers, including religious entities, for those instances where a prohibition against sexual activity outside of marriage is a legitimate qualification for a particular job. Moreover, SB 2278 provides no protection for churches, private schools, and youth organizations, such as scouting organizations, from being forced to violate their sincerely-held beliefs.

Senate Bill 2278, therefore, is flawed in its scope and its reach. It would establish the dangerous precedent of creating legal protection for chosen sexual activities while providing no legal protection for employers, churches, private schools, and youth organizations.



# FAIR HOUSING OF THE DAKOTAS

*(The Fair Housing of the Dakotas serves North and South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all.)*

Telephone: 701-221-2530

ND Relay: 1-800-366-6889 (Voice)

SD Relay: 1-800-877-1113 (Voice)

Address: 909 Basin Avenue, Suite 2, Bismarck, ND 58504

Toll Free: 1-888-265-0907

Fax: 701-221-9597

ND TDD: 1-800-927-9275

SD TDD: 1-866-273-3323

**Testimony before the  
Senate Judiciary Committee  
on Senate Bill 2278  
by the Fair Housing of the Dakotas  
February 3, 2009**

Mr. Chairman, and members of the Committee, my name is Amy S. Nelson and I am the Executive Director of the Fair Housing of the Dakotas (FHD). The FHD is a non-profit agency which serves North and South Dakota. We work to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD educates the public on Fair Housing Laws and also investigates allegations of housing discrimination. The Federal Fair Housing Act prohibits discrimination in the rental, sale or financing of housing due to race, color, religion, national origin, gender (sex), presence of children (familial status) and disability (handicap). North Dakota state law also provides these protections as well as due to age (40 and over) and status with respect to marriage (excludes unmarried couples at landlord's choice) and public assistance.

Currently, neither state nor federal law protects people in North Dakota from discrimination in housing due to their sexual orientation or gender identity. Our office receives a number of contacts each year from North Dakotans with housing questions and this protection is needed. Excluding issues based upon credit or criminal history, the most common complaint regarding the lack of protection from housing discrimination comes from those due to age (those between 18-40 years of age who are not protected under our age statute), sexual orientation or due to being unmarried couples. In the past year, we have received contacts from North Dakotans who were served evictions or lease non-renewals after requesting of their landlord that their partner be allowed to move in with them. Other complaints we received have involved refusal to rent when seeking housing after telling a prospective landlord that they would be living with their partner or after seeking housing with their partner. These North Dakotans were not denied housing due to business reasons such as their ability to pay rent or abide by lease requirements, but simply because of who they associated with and loved.

When I conduct trainings for housing providers, I'm often confronted with questions about being dictated as to who they can and cannot rent to in their properties. That, it's "my property, I can do what I want." However, I point out that that's not true. This is a business, it's not your personal home. There must be a balance between the needs of business owners and society. There are many laws that must be followed in owning and managing rental property. Properties must meet building, fire and safety codes; they must be built accessible to people with disabilities; and taxes must be paid. These were all laws that were passed at one time and now are part of doing business. The Fair Housing Law was originally passed at the federal level in 1968. At that time, it only protected due to race, color, national origin and religion. Gender was not protected until 1974 and disability was not protected until 1988. Prior to these dates, it was legal to discriminate against someone just because of these reasons and these reasons only. However, society changed and recognized that this was simply wrong. It was a fear of the unknown, of people that someone did not interact with which was driving this kind of



discrimination. After they got to know one another, the fear disappeared. My generation grew up in integrated schools and being told that girls could do anything boys could do. We never believed it was ok to treat someone differently just because of their race, color or gender yet my parent's generation was exposed to that. That's what laws can do.

I think we all today see that someone's race, gender or disability should have no impact on whether someone should or should not be rented to. Those reasons do not affect someone's ability to pay rent and abide by lease rules. Bad tenants come in all shapes, sizes, religions, genders and colors. Housing providers should use the legal means available to determine if someone should be rented to by checking previous landlord references and their ability to pay rent. Did they damage the property? Did they pay rent on time? Did they disturb their neighbors? Denying for these reasons is legal and understandable when running a business. I tell housing providers, you have a right to have your personal views, but you do not have the right to bring those views into your business world and use them to make decisions which have no impact upon your business and discriminate.

In 1983, North Dakota passed its Human Rights Law which covered all employment, public accommodations and housing transactions. North Dakota was ahead of the rest of the country. Those legislators chose to protect people from discrimination due to their disability which would not be protected for another 5 years in housing. North Dakota also protected due to age and status with respect to marriage and public assistance which are still not protected at a federal level. North Dakota recognized in 1983 that these reasons should not be used as a means to discriminate. North Dakota was a leader.

According to the report "Laws Prohibiting Discrimination Based on Sexual Orientation and Gender Identity" by the Institute of Real Estate Management dated July, 2007:

"Twenty states and Washington, DC have anti-discrimination laws prohibiting discrimination against individuals on their sexual orientation or gender identity.

Wisconsin was the first state to enact an anti-discrimination law in 1982. In the last five years, seven states have enacted similar laws."

As the numbers grow, it's apparent that society has changed and the states are catching up. Of our neighbors, Minnesota prohibits discrimination due to sexual orientation and gender identity in all transactions. Like North Dakota, Montana has legislation pending this session but does already provide protection for those in public employment which North Dakota does not. Many companies in North Dakota already provide the employment protection we are discussing today.

Like so many here, I grew up in a small North Dakota town. My high school graduating class was a big one for my town at 9 kids. I get so frustrated when we get accused in North Dakota of being backward and intolerant when small town values are anything but that. They are accepting and welcoming. They believe in fairness and value the person who helps out in their community, with the farm and when someone needs a helping hand regardless of their gender, religion, color, disability or even their sexual orientation. I want my state to continue to lead rather than follow. North Dakota again has that chance to be a leader like it was in 1983.

The Fair Housing of the Dakotas supports passage of Senate Bill 2278. I thank you for the opportunity to provide testimony today and please let me know if you have any questions or need any additional information. Thank you.

February 3, 2009

Testimony on Senate Bill 2278

Chairman and Members of the Committee,

My name is Gina Powers and I would like to thank you for taking this time to hear my testimony. I am honored to be here, before you all, representing my family and asking for your favorable action on Senate Bill 2278. Senate Bill 2278 seeks to add sexual orientation and gender identity as a protected class in the North Dakota Human Rights Act and it impacts my family directly. My family consists of myself, my partner Steph, our 16 year old daughter Cheryl who is here today, and five others. Steph was born in Cooperstown, raised in Fargo and I came to live here as a teen--over twenty years ago. We have three dogs, live in North Fargo and have wonderful neighbors on all sides. We attend church, go to school and work, mow our yard and raise our children with a timeless set of family values. The Peace Garden State is the place we call home and the fact our family is headed by two women does not reduce our value or contribution to this place; not our value as people or as a family unit. The reality is there are other families like mine all across the state, but families like mine, people like Steph and I, we live day to day under a cloud of less-than. From Fargo to Bismarck, Cavalire to Bowman, we are hard working, honest people living out tried and true North Dakota values in cities and towns far and wide. We are your sons and daughters--your brothers and sisters. We are your family and your neighbors. In the end SB 2278 doesn't just impact my family and people like us, it impacts us all.

Now, when we all stand together against rising flood waters tossing sandbags down the line, and when we sit together at the pancake feed or spaghetti supper we don't ask each other who loves men and who loves women. In North Dakota we are discreet about our personal lives and we treat each other with respect and fairness. But there are too many North Dakotans who live in fear of losing their jobs or being evicted from their homes simply because of who they love. This is not discreet, this is not respectful and this is not fair.

You have an opportunity here to lift a burden from the people and to have us emerge from this legislative session a better North Dakota. You have the ability here today to bring in some sunlight, to burn away some of that cloud of less-than that looms over those who would call their orientation LGB or T. The values with which we were instilled from our pews and dining room tables haven't changed, but the need to add sexual orientation and gender identity to the North Dakota Human Rights Act has. When we live under a cloud, we cannot possibly be free to devote ourselves to our God given purpose or potential. Without the passage of SB 2278, that cloud still looms. We value our State, we ask you to welcome us home by saying we are valued back.

- In North Dakota, your gay son or daughter can be evicted from their apartment simply because of their sexual orientation.
- In North Dakota, your gay niece or nephew can be fired from their job simply because they are homosexual.
- In North Dakota, your gay brother or sister can be denied equal access to justice simply because of who they love.

It is time to put an end to this fear and this reality, because in North Dakota we do the right thing. This is the right thing to do and now is the time to pass SB 2278 adding sexual orientation and gender identity to the ND Human Rights Act. On behalf of my family I wish to thank you for your time and your compassionate consideration of this important piece of legislation.

Respectfully submitted by Gina M. Powers, 1114 4th Street North, Fargo, North Dakota

Wade Schemmel

Testimony on behalf of SB2278

2/3/09

Wade Schemmel

Conference Minister,

Northern Plains Conference

United Church of Christ

Member North Dakota Human Rights Coalition

Board of Directors

In July of 1975 the General Synod of the United Church of Christ, in a civil rights pronouncement, identified that there is a significant population in the United States whose civil liberties and right to equal protection under the law, are systematically and routinely violated. The General Synod recognized that discrimination related to sexual orientation in employment, housing, public accommodations and other civil liberties, inflicts an incalculable burden of fear into the lives of persons in society.

The constant fear of losing one's job and home, and the economic and social consequences of such a loss, creates suffering in human life. Living as presumed heterosexuals, same-gender oriented women and men are intimidated into silence, forced into lives of duplicity and deception, by the hostility of the majority society.

Gay, Lesbian, Bisexual and Transgender persons, together with their families, friends and allies, continue to work to free themselves from the fear which the reality of discrimination, particularly in employment and housing, inflicts upon them.

SB2278 is an important step on the journey to securing full civil liberties and equal protection under the law for Gay, Lesbian, Bisexual and Transgender citizens of North Dakota, our sisters and brothers in the human community.

**It is time that North Dakota's Laws matched our values.**

- **We live in a country that promises everyone equal treatment, with a constitution that speaks to certain inalienable rights.** Yet in North Dakota people can lose their jobs and be denied housing because of their orientation.
- **Discrimination is an all-to-unpleasant reality for too many LGBT people in our state.**
- State law already specifically prohibits discrimination based on race, color, religion, gender, national origin, age, ancestry or disability. **We now need to complete the vision and add sexual orientation.**
- **Fairness is not a partisan issue. It is the right thing for North Dakota at this time.**
- **Unfair practices are bad for business and bad for the economy of North Dakota.**
- **Members of the Gay, Lesbian, Bisexual and Transgender community are for the most part hard working and tax paying citizens who are being denied civil liberties given to every other citizen.** Who one loves and lives with is not the issue, civil liberties and justice are.

-2-

Therefore, I am here to give voice to the mandate of the General Synod of the United Church of Christ – first adopted some 30 years ago and reaffirmed on numerous occasions since – to support the enactment of legislation at the federal, state and local levels of government that would guarantee the liberties of all persons without discrimination related to sexual orientation, gender identity or gender expression. SB 2278 will do just that. This legislation is long overdue and therefore we call on members of the North Dakota Legislature to support and pass it quickly so that it may become law as soon as possible.

Thank you.

## PROPOSED AMENDMENTS TO SENATE BILL NO. 2278

Page 1, line 4, after "14-02.5-10," insert "26.1-04-03, 26.1-30.1-01.1, 26.1-39-17"

Page 11, after line 6, insert the following:

**"SECTION 19. AMENDMENT.** Section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-04-03. Unfair methods of competition and unfair or deceptive acts or practices defined.** The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

1. **Misrepresentations and false advertising of policy contracts.** Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policies, or making any misleading representation or any misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurance company operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy or for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance.
2. **False information and advertising generally.** Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of that person's insurance business, which is untrue, deceptive, or misleading.

3. Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure any person engaged in the business of insurance.
4. Boycott, coercion, and intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.
5. False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of any person with intent to deceive.

Making any false entry in any book, report, or statement of any person with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the person is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the person in any book, report, or statement of the person.

6. Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
7. Unfair discrimination.
  - a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.



- b. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.
  - c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.
  - d. Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.
8. Rebates.
- a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance or annuity any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits

thereon, or any valuable consideration or inducement whatsoever not specified in the contract; or giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

- b. Subsection 7 or subdivision a of this subsection do not prohibit the following practices:
  - (1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders;
  - (2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; and
  - (3) Readjusting the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year.

9. Unfair claim settlement practices. Committing any of the following acts, if done without just cause and if performed with a frequency indicating a general business practice:

- a. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue.
- b. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under insurance policies.

- c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- d. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear.
- e. Compelling insureds to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.
- f. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.
- g. Attempting settlement or compromise of claims on the basis of applications which were altered without notice to, or knowledge or consent of, insureds.
- h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed one was entitled by reference to written or printed advertising material accompanying or made a part of an application.
- i. Attempting to delay the investigation or payment of claims by requiring an insured and the insured's physician to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.
- j. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss has been completed.
- k. Refusing payment of claims solely on the basis of the insured's request to do so without making an independent evaluation of the insured's liability based upon all available information.
- l. Providing coverage under a policy issued under chapter 26.1-45 or 26.1-36.1 for confinement to a nursing home and refusing to pay a claim when a person is covered by such a policy and the person's physician ordered confinement

pursuant to the terms of the policy for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.

- m. Failure to use the standard health insurance proof of loss and claim form or failure to pay a health insurance claim as required by section 26.1-36-37.1. It is not a prohibited practice for a health insurance company with participating provider agreements to require that a subscriber or member using a nonparticipating provider be responsible for providing the insurer a copy of medical records used for claims processing.
10. Unfair handling of communications by insurance company. Failing to adopt and implement reasonable standards for the prompt handling of written communications, primarily expressing grievances, received by the insurance company from insureds or claimants.
  11. Refusing to insure risks. Refusing to insure risks solely because of race, color, creed, sex, sexual orientation, or national origin, or refusing to continue to insure risks solely because an employer chooses to offer a health maintenance organization option to employees in its health benefit plan.
  12. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, insurance producer, or individual.
  13. Failure to refund unearned premiums. Failing to refund within thirty days of the cancellation of an insured's policy the unearned premium paid for that insurance policy. However, for commercial lines of insurance policies which are audited by the insurer to determine premium, the refund of premium must be made within thirty days from the date the insurer receives from the insured that information which is reasonably necessary for the insurer to audit the insured's business to determine the premium due to the insurer.
  14. As used in subsections 15, 16, 17, 18, and 19, unless the context otherwise requires:

- a. "Entity" includes a third-party administrator, an insurance company as defined in section 26.1-02-01, a health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation.
- b. "Health care provider" means a person that delivers, administers, or supervises health care products or services, for profit or otherwise, in the ordinary course of business or professional practice.
- c. "Health plan" means any public or private plan or arrangement that provides or pays the cost of health benefits, including any organization of health care providers that furnishes health services under a contract or agreement with this type of plan.
- d. "Medical communication" means any communication, other than a knowing and willful misrepresentation, made by a health care provider to a patient regarding the health care needs or treatment options of the patient and the applicability of the health plan to the patient's needs or treatment. The term includes communications concerning:
  - (1) Tests, consultations, and treatment options;
  - (2) Risks or benefits associated with tests, consultations, and options;
  - (3) Variation in experience, quality, or outcome among any health care providers or health care facilities providing any medical service;
  - (4) The process, basis, or standard used by an entity to determine whether to authorize or deny health care services or benefits; and
  - (5) Financial incentives or disincentives based on service utilization provided by an entity to a health care provider.
- e. "Patient" includes a former, current, or prospective patient or the guardian or legal representative of any former, current, or prospective patient.

15. a. Interference with certain medical communications. An entity offering a health plan may not restrict or interfere with any medical communication and may not take any of the following actions against a health care provider solely on the basis of a medical communication:
- (1) Refusal to contract with the health care provider;
  - (2) Termination of or refusal to renew a contract with the health care provider;
  - (3) Refusal to refer patients to or allow others to refer patients to the health care provider; or
  - (4) Refusal to compensate the health care provider for covered services that are medically necessary.
- b. This subsection does not prohibit an entity from enforcing, as part of a contract or agreement to which a health care provider is a party, any mutually agreed-upon terms and conditions, including terms and conditions requiring a health care provider to participate in and cooperate with all programs, policies, and procedures developed or operated by a health plan to assure, review, or improve the quality and effective utilization of health care services, if the utilization is according to guidelines or protocols that are based on clinical or scientific evidence and only if the guidelines or protocols under the utilization do not prohibit or restrict medical communications between providers and their patients.
16. Unfair indemnification. A contract between an entity and a health care provider may not require the health care provider to indemnify the entity for the entity's negligence, willful misconduct, or breach of contract, and may not require a health care provider as a condition of participation to waive any right to seek legal redress against the entity. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void.
17. Incentives to withhold medically necessary care. An entity may not offer a health care provider, and a contract with a health care provider under a health plan may not contain, an incentive plan that includes a specific payment made to, or withheld from, the provider as an inducement to deny, reduce, limit, or delay medically necessary care covered by the health plan and provided with respect to a patient. This subsection does not prohibit incentive plans, including capitation payments or shared-risk arrangements,

that are not tied to specific medical decisions with respect to a patient. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void. As used in this subsection, "medically necessary care" means health care services, supplies, or treatments that a reasonably prudent physician or other health care provider would provide to a patient for the prevention, diagnosis, or treatment of illness, injury, disease, or its symptoms which are in accordance with generally accepted standards of medical practice, clinically appropriate in terms of type, frequency, extent, site, and duration, and not primarily for the convenience of the patient, physician, or other health care provider. This definition does not preclude an entity from establishing a definition of "medically necessary care" for determining which services are covered by the health plan.

18. **Retaliation for patient advocacy.** An entity may not take any of the following actions against a health care provider solely because the provider, in good faith, reports to state or federal authorities an act or practice by the entity that jeopardizes patient health or welfare, or advocates on behalf of a patient in a utilization review program or grievance procedure:
  - a. Refusal to contract with the health care provider;
  - b. Termination of or refusal to renew a contract with the health care provider;
  - c. Refusal to refer patients to or allow others to refer patients to the health care provider; or
  - d. Refusal to compensate the health care provider for covered services that are medically necessary.
19. **Unfair reimbursement.** An entity may not require that a health care provider receive under a health plan, pursuant to policies of the entity or a contract with the health care provider, the lowest payment for services and items that the health care provider charges or receives from any other entity. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void.
20. **Unfair referral.** An insurer, insurance producer, or third-party administrator referring an individual employee to the association, or arranging for an individual employee to apply to the association for the purpose of separating that employee from group health

insurance coverage provided in connection with the employee's employment.

**SECTION 20. AMENDMENT.** Section 26.1-30.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-30.1-01.1. Unlawful grounds for declination.** The declination or termination of a commercial insurance policy subject to sections 26.1-30.1-01 through 26.1-30.1-08 by an insurer or insurance producer is prohibited if the declination or termination is based solely upon any of the following reasons:

1. The race, religion, nationality, ethnic group, disability, age, sex, sexual orientation, or marital status of the applicant or named insured, except this subsection does not prohibit rating differentials based upon age, sex, or marital status.
2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer or insurance producer that limits its market to one lawful occupation or profession or to several related occupations or professions.
3. The age or location of the property of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.
4. The principal location of the insured motor vehicle, unless the decision is for a business purpose which is not a mere pretext for unfair discrimination.
5. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
6. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism or an insurance company that insures substandard risks.

**SECTION 21. AMENDMENT.** Section 26.1-39-17 of the North Dakota Century Code is amended as follows:

**26.1-39-17. Prohibited reasons for declination or termination of property and casualty policies.** The declination or termination of a property insurance policy subject to sections 26.1-39-10 through 26.1-39-21 by an insurer or insurance producer is prohibited if the declination or termination is based upon any of the following reasons:



1. The race, religion, nationality, ethnic group, age, sex, sexual orientation, or marital status of the applicant or named insured.
2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer that limits its market to one lawful occupation or profession or to several related lawful occupations or professions.
3. The age or location of the residence of the applicant or named insured unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.
4. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
5. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.”

Renumber accordingly

Unofficial proposed amendment to SB 2278:

Page 5, after line 19, insert:

4. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from establishing any qualifications or hiring criteria for employees (whether paid or unpaid) in religious positions.

Nor does this chapter prohibit a religious organization, association, or society from limiting employment (whether paid or unpaid) in non-religious positions to individuals who are of the same religion or who adhere to the religion's tenets unless membership in the religion is restricted because of race, color or national origin.

This chapter does not prohibit a religious organization, association or society from limiting access or admission to its places of worship or its parochial schools to individuals of the same religion or who adhere to the religion's tenets.

The Library of Congress > THOMAS Home > Bills, Resolutions > Search Results

<b>THIS SEARCH</b>	<b>THIS DOCUMENT</b>	<b>GO TO</b>
<a href="#">Next Hit</a>	<a href="#">Forward</a>	<a href="#">New Bills Search</a>
<a href="#">Prev Hit</a>	<a href="#">Back</a>	<a href="#">Home Page</a>
<a href="#">Hit List</a>	<a href="#">Best Sections</a>	<a href="#">Help</a>
	<a href="#">Contents Display</a>	

*Amend  
SB 2278*

## H.R. 2015

### Employment Non-Discrimination Act of 2007 (Introduced in House)

#### SECTION 1. SHORT TITLE.

This Act may be cited as the 'Employment Non-Discrimination Act of 2007'.

#### SEC. 2. PURPOSES.

The purposes of this Act are--

- (1) to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation or gender identity;
- (2) to provide meaningful and effective remedies for employment discrimination on the basis of sexual orientation or gender identity; and
- (3) to invoke congressional powers, including the powers to enforce the 14th amendment to the Constitution, and to regulate interstate commerce and provide for the general welfare pursuant to section 8 of article I of the Constitution, in order to prohibit employment discrimination on the basis of sexual orientation or gender identity.

#### SEC. 3. DEFINITIONS.

(a) In General- In this Act:

- (1) COMMISSION- The term 'Commission' means the Equal Employment Opportunity Commission.
- (2) COVERED ENTITY- The term 'covered entity' means an employer, employment agency, labor organization, or joint labor-management committee.
- (3) EMPLOYEE-
  - (A) IN GENERAL- the term 'employee' means--
    - (i) an employee as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));
    - (ii) a Presidential appointee or State employee to which section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16(a)(1)) applies;
    - (iii) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or
    - (iv) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies.
  - (B) EXCEPTION- The provisions of this Act that apply to an employee or individual shall not apply to a volunteer who receives no compensation.
- (4) EMPLOYER- The term 'employer' means--
  - (A) a person engaged in an industry affecting commerce (as defined in section (701)(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees (as defined in subparagraphs (A)(i) and (B) of paragraph (3)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;
  - (B) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;
  - (C) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code, or; and
  - (D) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.
- (5) EMPLOYMENT AGENCY- The term 'employment agency' has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c))
- (6) GENDER IDENTITY- The term 'gender identity' means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.
- (7) LABOR ORGANIZATION- The term 'labor organization' has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(8) PERSON- The term 'person' has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(9) SEXUAL ORIENTATION- The term 'sexual orientation' means homosexuality, heterosexuality, or bisexuality.

(10) STATE- The term 'State' has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

(b) Application of Definitions- For purposes of this section, a reference in section 701 of the Civil Rights Act of 1964--

(1) to an employee or an employer shall be considered to refer to an employee (as defined in paragraph (3)) or an employer (as defined in paragraph (4)), respectively, except as provided in paragraph (2) below; and

(2) to an employer in subsection (f) of that section shall be considered to refer to an employer (as defined in paragraph (4)(A)).

#### SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.

(a) Employer Practices- It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation or gender identity; or

(2) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.

(b) Employment Agency Practices- It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual or to classify or refer for employment any individual on the basis of the actual or perceived sexual orientation or gender identity of the individual.

(c) Labor Organization Practices- It shall be an unlawful employment practice for a labor organization--

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment, or would limit such employment or otherwise adversely affect the status of the individual as an employee or as an applicant for employment because of such individual's actual or perceived sexual orientation or gender identity; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training Programs- It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the actual or perceived sexual orientation or gender identity of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Association- An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the actual or perceived sexual orientation or gender identity of a person with whom the individual associates or has associated.

(f) No Preferential Treatment or Quotas- Nothing in this Act shall be construed or interpreted to require or permit--

(1) any covered entity to grant preferential treatment to any individual or to any group because of the actual or perceived sexual orientation or gender identity of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any actual or perceived sexual orientation or gender identity employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such actual or perceived sexual orientation or gender identity in any community, State, section, or other area, or in the available work force in any community, State, section, or other area; or

(2) the adoption or implementation by a covered entity of a quota on the basis of actual or perceived sexual orientation or gender identity.

(g) Disparate Impact- Only disparate treatment claims may be brought under this Act.

#### SEC. 5. RETALIATION PROHIBITED.

It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual (1) opposed any practice made an unlawful employment practice by this Act; (2) opposed any practice that the individual reasonably believed is an unlawful employment practice under this Act; or (3) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

#### SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.

(a) In General- This Act shall not apply to any of the employment practices of a religious corporation, association, educational institution, or society which has as its primary purpose religious ritual or worship or the teaching or spreading of religious doctrine or belief.

(b) Certain Employees- For any religious corporation, association, educational institution, or society that is not wholly exempt under subsection (a), this Act shall not apply with respect to the employment of individuals whose primary duties consist of teaching or spreading religious doctrine or belief, religious governance, supervision of a religious order, supervision of persons teaching or spreading religious doctrine or belief, or supervision or participation in religious ritual or worship.

(c) Conformity to Religious Tenets- Under this Act, a religious corporation, association, educational institution, or society may require that

applicants for, and employees in, similar positions conform to those religious tenets that such corporation, association, institution, or society declares significant. Under this Act, such a declaration by a religious corporation, association, educational institution or society stating which of its religious tenets are significant shall not be subject to judicial or administrative review. Any such declaration made for purposes of this Act shall be admissible only for proceedings under this Act.

## SEC. 7. NONAPPLICATION TO MEMBERS OF THE ARMED FORCES; VETERANS' PREFERENCES.

### (a) Armed Forces-

(1) EMPLOYMENT- In this Act, the term 'employment' does not apply to the relationship between the United States and members of the Armed Forces.

(2) ARMED FORCES- In paragraph (1) the term 'Armed Forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) Veterans' Preferences- This title does not repeal or modify any Federal, State, territorial, or local law creating a special right or preference concerning employment for a veteran.

## SEC. 8. CONSTRUCTION.

### (a) Employer Rules and Policies-

(1) IN GENERAL- Nothing in this Act shall be construed to prohibit a covered entity from enforcing rules and policies that do not circumvent the purposes of this Act, if the rules or policies are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.

(2) SEXUAL HARASSMENT- Nothing in this Act shall be construed to limit a covered entity from taking adverse action against an individual because of a charge of sexual harassment against that individual, provided that rules and policies on sexual harassment, including when adverse action is taken, are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.

(3) CERTAIN SHARED FACILITIES- Nothing in this Act shall be construed to establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen fully unclothed is unavoidable, provided that the employer provides reasonable access to adequate facilities that are not inconsistent with the employee's gender identity as established with the employer at the time of employment or upon notification to the employer that the employee has undergone or is undergoing gender transition, whichever is later.

(4) DRESS AND GROOMING STANDARDS- Nothing in this Act shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law, provided that the employer permits any employee who has undergone gender transition prior to the time of employment, and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after the time of employment, to adhere to the same dress or grooming standards for the gender to which the employee has transitioned or is transitioning.

(5) ACTIONS CONDITIONED ON MARRIAGE- Notwithstanding section 4(g), an unlawful employment practice under section 4 shall include an action described in that section that is conditioned, in a State in which a person cannot marry a person of the same sex, either on being married or being eligible to marry.

(b) Employee Benefits- Nothing in this Act shall be construed to require a covered entity to treat a couple who are not married, including a same-sex couple who are not married, in the same manner as the covered entity treats a married couple for purposes of employee benefits. Notwithstanding this Act or any other provision of law, a State or political subdivision of a State may establish rights, remedies, or procedures for the provision of employee benefits to an individual for the benefit of the domestic partner of such individual.

## SEC. 9. COLLECTION OF STATISTICS PROHIBITED.

The Commission shall not collect statistics on actual or perceived sexual orientation or gender identity from covered entities, or compel the collection of such statistics by covered entities.

## SEC. 10. ENFORCEMENT.

(a) Enforcement Powers- With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act--

(1) the Commission shall have the same powers as the Commission has to administer and enforce--

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c),

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)), respectively;

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(3) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));

(4) the Attorney General shall have the same powers as the Attorney General has to administer and enforce--

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c);

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)), respectively;

(5) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title;

(6) a court of the United States shall have the same jurisdiction and powers as the court has to enforce--

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act (42 U.S.C. 2000e-16b(a)(1));

(C) the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)); and

(D) chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title.

(b) Procedures and Remedies- The procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are--

(1) the procedures and remedies applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(2) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) in the case of a claim alleged by such individual for a violation of such section;

(3) the procedures and remedies applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in the case of a claim alleged by such individual for a violation of such section; and

(4) the procedures and remedies applicable for a violation of section 411 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of such section.

(c) Other Applicable Provisions- With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) for a violation of this Act, title III of the Congressional Accountability Act of 1995 (2 U.S.C.

<b>THIS SEARCH</b>	<b>THIS DOCUMENT</b>	<b>GO TO</b>
<a href="#">Next Hit</a>	<a href="#">Forward</a>	<a href="#">New Bills Search</a>
<a href="#">Prev Hit</a>	<a href="#">Back</a>	<a href="#">HomePage</a>
<a href="#">Hit List</a>	<a href="#">Best Sections</a>	<a href="#">Help</a>
	<a href="#">Contents Display</a>	

3/18/2009

#1

Chairman and members of the House Human Services Committee:

Senator Fiebiger has already introduced the bill, so I would like to try to provide a little more context and address some of the objections we've heard up to this point. First, I'd like to emphasize how much support this bill has and why it is time that we pass this important legislation.

Business and community leaders across North Dakota already include sexual orientation in their non-discrimination clauses. Hospitals, banks, tech companies and even the North Dakota University System are included in that list.

Working on this bill, I've seen our support swell across the state. Literally thousands of people in support of this include teachers and students, parents and grandparents, faith leaders and professors, Democrats and Republicans, business people and attorneys, easterners and westerners. I know that you've heard from many of them.

We were happy to gain the support of the City of Fargo, and then to read the Bismarck Tribune's favorable editorial. But what struck me most, and what I believe speaks loudest, is the voice of young North Dakotans. A Facebook group dedicated to the bill garnered 3,000 people in under a month. Since then, we've gained the support North Dakota State University's Student Senate and the University of North Dakota's Student Senate. In a landslide vote, UND's entire student body voted to support the bill.

Then and here's what speaks volumes ~~the~~ North Dakota Student Association, an organization that represents the interests of approximately 42,000 students at our state-funded institutions of higher education, voted unanimously to support SB 2278. This bill gives us a chance not only to value *all* of those students, but to listen to what they have to say.

We've had questions about whether this type of discrimination happens. I can assure you: it does. Ask any attorney who practices employment law. Ask the Labor Commissioner or Fair Housing of the Dakotas' director. Or, better yet, ask the thousands and thousands of students who see a need for this legislation. But I'll leave the stories to the witnesses behind me.

The Senate gave this bill careful consideration, and it resulted in a solid bill that addresses nearly all of the legitimate objections that were heard. The bill was amended to protect the First Amendment rights of religious organizations. The rights of expressive youth-serving organizations are already protected under the ruling of *Boys Scouts of America v. US Supreme Court*. Current housing laws already offer exemptions to mom n' pop landlords; this bill will not change that.

The truth is that there is no great reason to oppose this bill. To those that do, I pose a simple 'Yes' or 'No' question: Do we really want to maintain the ability to discriminate against a group of people?

In the absence of concrete objections, some opponents have turned to scare-tactics ambiguous arguments. I've heard some opponents talk about values and talk about family. So let's talk about those things.

If we're talking about values, let's talk about the core values of loving our neighbors and making sure that everyone has a fair shot at a decent job and a place to live.

If we're talking about family, let's talk about all families. I have families behind me here today: parents, grandparents, siblings, and children all affected by this.

And let's be very clear: when either side talks about homosexuals, we are talking about some of your colleagues in the Senate and in the House. We're talking about your colleagues' families. We are talking about people we all know.

Discrimination based on sexual orientation or gender identity is simply not right. We should not treat people this way, and that's what this bill hopes to prevent.

This is a simple bill. It's a bill that expands and better defines our rights, rather than restrict them. It's a bill that extends fairness and opportunity to more people. It's a bill that values all North Dakotans.

Many brave people have stepped forward to support this legislation. I hope you are able to honor their courage, and support SB 2278 here today.

In service,



Mitch Marr

Executive Director

North Dakota Human Rights Coalition



#2

# FAIR HOUSING OF THE DAKOTAS

*(The Fair Housing of the Dakotas serves North and South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all.)*

Telephone: 701-221-2530  
ND Relay: 1-800-366-6889 (Voice)  
SD Relay: 1-800-877-1113 (Voice)  
Address: 909 Basin Avenue, Suite 2, Bismarck, ND 58504

Toll Free: 1-888-265-0907  
Fax: 701-221-9597  
ND TDD: 1-800-927-9275  
SD TDD: 1-866-273-3323

## Testimony before the House Human Services Committee on Senate Bill 2278 by the Fair Housing of the Dakotas March 18, 2009

Mr. Chairman, and members of the Committee, my name is Amy S. Nelson and I am the Executive Director of the Fair Housing of the Dakotas (FHD). The FHD is a non-profit agency which serves North and South Dakota. We work to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD educates the public on Fair Housing Laws and also investigates allegations of housing discrimination. The Federal Fair Housing Act prohibits discrimination in the rental, sale or financing of housing due to race, color, religion, national origin, gender (sex), presence of children (familial status) and disability (handicap). North Dakota state law also provides these protections as well as due to age (40 and over) and status with respect to marriage (excludes unmarried couples at landlord's choice) and public assistance. The question has been raised about how this bill will affect smaller housing providers. Those with 3 single family homes or less or 4 rental units or less are currently exempt from federal and state fair housing laws (see ND Century Code 14-02.5-08 for additional details) except in regard to advertising. This bill would not change those exemptions.

Currently, neither state nor federal law protects people in North Dakota from discrimination in housing due to their sexual orientation or gender identity. Our office receives a number of contacts each year from North Dakotans with housing questions and this protection is needed. Excluding issues based upon credit or criminal history, the most common complaint regarding the lack of protection from housing discrimination comes from those due to age (those between 18-40 years of age who are not protected under our age statute), sexual orientation or due to being unmarried couples. In the past year, we have received contacts from North Dakotans who were served evictions or lease non-renewals after requesting of their landlord that their partner be allowed to move in with them. Other complaints we received have involved refusal to rent when seeking housing after telling a prospective landlord that they would be living with their partner or after seeking housing with their partner. These North Dakotans were not denied housing due to business reasons such as their ability to pay rent or abide by lease requirements, but simply because of who they associated with and loved.

When I conduct trainings for housing providers, I'm often confronted with questions about being dictated as to who they can and cannot rent to in their properties. That, it's "my property, I can do what I want." However, I point out that that's not true. This is a business, it's not your personal home. There must be a balance between the needs of business owners and society. There are many laws that must be followed in owning and managing rental property. Properties must meet building, fire and safety codes; they must be built accessible to people with disabilities; and taxes must be paid. These were all laws that were passed at one time and now are part of doing business. The Fair Housing Law was originally passed at the federal level in 1968. At that time, it only protected due to race, color, national origin and religion. Gender was not protected until 1974 and disability and familial status was not protected until 1988. Prior to these dates, it was legal to discriminate against someone just because of these reasons and



these reasons only. However, society recognized that this was simply wrong. It was a fear of the unknown, of people that someone did not interact with which was driving this kind of discrimination. After they got to know one another, the fear disappeared. My generation grew up in integrated schools and being told that girls could do anything boys could do. We never believed it was ok to treat someone differently just because of their race, color or gender yet my parent's generation was exposed to that. That's what laws can do.

I think we all today see that someone's race, gender or disability should have no impact on whether someone should or should not be rented to. Those reasons do not affect someone's ability to pay rent and abide by lease rules. Bad tenants come in all shapes, sizes, religions, genders and colors. Housing providers should use the legal means available to determine if someone should be rented to by checking previous landlord references and their ability to pay rent. Did they damage the property? Did they pay rent on time? Did they disturb their neighbors? Denying for these reasons is legal and understandable when running a rental property and business. I tell housing providers, you have a right to have your personal views, but you do not have the right to bring those views into your business world and use them to make decisions which have no impact upon your business and discriminate.

In 1983, North Dakota passed its Human Rights Law which covered all employment, public accommodations and housing transactions. North Dakota was ahead of the rest of the country. Those legislators chose to protect people from discrimination due to their disability which would not be protected for another 5 years in housing. North Dakota also protected due to age and status with respect to marriage and public assistance which are still not protected at a federal level. North Dakota recognized in 1983 that these reasons should not be used as a means to discriminate. North Dakota was a leader.

According to the report "Laws Prohibiting Discrimination Based on Sexual Orientation and Gender Identity" by the Institute of Real Estate Management dated July, 2007:

"Twenty states and Washington, DC have anti-discrimination laws prohibiting discrimination against individuals on their sexual orientation or gender identity.

Wisconsin was the first state to enact an anti-discrimination law in 1982. In the last five years, seven states have enacted similar laws."

As the numbers grow, it's apparent that society has recognized this type of protection as needed and the states are catching up. Of our neighbors, Minnesota prohibits discrimination due to sexual orientation and gender identity in all transactions. Like North Dakota, Montana has legislation pending this session (listed as in committee) but does already provide protection for those in public employment which North Dakota does not. Many companies in North Dakota already provide the employment protection we are discussing today.

Like so many here, I grew up in a small North Dakota town. My high school graduating class was a big one for my town at 9 kids. I get so frustrated when we get accused in North Dakota of being backward and intolerant when small town values are anything but that. They are accepting and welcoming. They believe in fairness and value the person who helps out in their community, with the farm and when someone needs a helping hand regardless of their gender, religion, color, disability or even their sexual orientation. I want my state to continue to lead rather than follow. North Dakota again has that chance to be a leader like it was in 1983.

The Fair Housing of the Dakotas supports passage of Senate Bill 2278. I thank you for the opportunity to provide testimony today and please let me know if you have any questions or need any additional information. Thank you.

Chairman Weisz and members of the House Human Services Committee. My name is Sherri Paxon and I live in the Bismarck-Mandan area. I'm presenting this testimony in support of SB 2278, which will add the category of sexual orientation to the North Dakota policy protecting citizens in the areas of employment, accommodations, government services and credit transactions. Specifying sexual orientation, which as defined in the legislation includes actual or perceived heterosexuality, bisexuality, homosexuality and gender identity or expression, is an absolutely essential improvement to the current North Dakota law.

My spouse, Vickie, and I have worked with Equality North Dakota, Dakota OutRight and the North Dakota Human Rights Coalition, which all strive to improve conditions for lesbian, gay, bisexual and transgender (LGBT) people in the state. As we talk with members of these communities, one of the most prevalent fears voiced is being fired when an employer discovers they are lesbian, gay, bisexual or transgender. Hiding the gender of your significant other, editing your conversations with co-workers and remaining closeted in the workplace is an extremely stressful and difficult way to live. Without the security of legal protection, members of the gay community live in a climate of fear that can result in increased absenteeism and decreased performance, as well as diminished self esteem and negative impacts on physical health.

This fear described by many LGBT individuals is based on fact. In the 2001 Public Perception Study of Discrimination in North Dakota, commissioned by the North Dakota Department of Labor Human Rights Division, questions were asked based on the existing law that covers race, color, religion, sex, national origin, age and mental or physical disability. Though the survey was limited to those specific categories the respondents volunteered several descriptions of discrimination based on sexual orientation. This is a clear indication that the addition of sexual orientation to the law is needed.

On a personal note, several years ago I decided to not let fear choose my path by no longer hiding my sexual orientation. Though this was a mentally healthy choice, it had repercussions. At my place of employment I was considered a good and valuable employee. Both supervisors and subordinates praised my work and my annual evaluations were excellent. This all changed when it became evident to my coworkers that I was in a same gender committed relationship. My supervisors no longer openly communicated with me and I sensed that my staff, though remaining outwardly courteous, were no longer a part of the team we had developed. The climate quickly degenerated into instances of harassment and barely disguised workplace bullying. After several months of walking on eggshells, of increased effort and taking on extra responsibilities, it was clear that nothing I could do would improve these work conditions. Because I had no legal recourse and in order to protect my mental and physical health, I felt I had to resign my position. I truly believe the outcome would have been different had the proposed amendment to this legislation been in effect at that time.

I urge you to make this common sense improvement in the current law, in order to better protect more hardworking North Dakotans.

Thank you for your time and attention.

#4

SB 2278

March 18, 2009

Mr. Chairman, and members of the committee, my name is Ron Hildahl from Mandan. I moved to North Dakota eight years ago to serve as a pastor of two churches. I was enjoying my career and came to appreciate the landscape and the people of the area. After one year of living here, I came out to myself as a gay man and began a dating relationship with my partner, Dan Tokach. Within that particular church denomination, I could be gay and serve as a pastor but I could not be in a same-gender relationship. As a result of my relationship, I was then asked to resign from my position and the denomination. What I found most hurtful, unfair, and unjust was the fact that one day I was more than qualified to perform my job but upon revealing my same-gender relationship, it appeared that suddenly I was no longer fit to keep my job. My skills, education, work experience, and job performance hadn't changed. None of that seemed to matter. It was as if someone had pulled the rug out from under my feet.

I know that religious institutions have the right to make those decisions, but I wish to make clear that I know firsthand the harsh and painful reality of losing a job because of my sexual orientation. I wish I could say that I was the only one to have had that experience. Unfortunately I am not alone. I am here today to speak on my behalf and to be a voice for those in the gay, lesbian, bisexual and transgender (GLBT) community who cannot speak for themselves.

My partner and I have been leaders in the GLBT community in this part of the state over the past six years. In that capacity, I have heard countless stories from individuals from every corner of our state who share the same fear of losing their job if someone found out their sexual orientation or gender identity. This real and legitimate fear keeps many people closeted. It also causes others to leave our state for areas that offer protections for ALL people.

About four years ago I attended a forum in Bismarck for pastors and church leaders. The national head of the denomination was also present. The subject of sexual orientation and ordination came up. At that point, I took the opportunity to share the story of my coming out and my resignation in front of the entire group. In the discussion that followed, one gentleman stood up in front of everyone and said to me, "There are other places that will take you. Why don't you go where they'll take you?!" Wow! No one, no matter where they work or where they live should ever have to hear those words, "Why don't you go where they'll take you?!"

North Dakota is where I choose to be at this point in my life. North Dakota is where many others who are gay, lesbian, bisexual, and transgender choose to be. No one - not our parent, not our sister, not our uncle, not our cousin, not our child, not our neighbor - no one should be forced from their job or housing because of their sexual orientation or gender identity. This legislation is about being fair, about offering equal opportunities for ALL North Dakotans.

I now serve as a pastor in a denomination that values who I am and offers me the opportunity to use my skills, education, and God-given gifts. Passing this legislation helps to ensure that every person can be valued for who they are and can have gainful employment and housing.

House Human Services Committee  
Testimony on SB2278  
March 18, 2009

# 6

Mr. Chairman, members of the committee, my name is Wayne Kutzer, I reside at 1959 Thompson Street in Bismarck.

I wholeheartedly support SB 2278, which is all about fairness ...equal treatment ...civil rights. It's unfortunate that we have to have legislation that protects individuals just for who they are, but I am also a realist and know that this piece of legislation is not only needed, it is the right thing to do. This is basic civil rights.

Adding sexual orientation to the language in each of these sections of anti discrimination law also sends a statement that we value people, just as when we say you can't discriminate on the basis of race, ethnicity, religion, sex, and all the others that are listed in law. Discriminatory practices of any kind are rooted in fear and ignorance, discrimination based on sexual orientation is no exception.

I am sure you will hear of statistics that nearly one half of the states and many individual cities, as well as the federal government, already have similar laws protecting those whose sexual orientation is different, but this law is about North Dakota – how we as a state value individuals, it will help to create that “quality of place” in our state, that is open to diversity, and one that is serious about protecting the rights of everyone.

Mr. Chairman, members of the committee this bill is the right thing to do. If there ever was a classic “No Brainer” this bill is it. Equal rights and equal protection is something that we must stand for. As the father of a young gay man, who feels his opportunities are limited in our state, this is a signal that North Dakota can send which tells all of our citizens they we value their presence and want them to look at opportunities here. I strongly recommend a do pass on SB 2278 and would be glad to answer any questions that you may have.



#9 HUMAN RELATIONS COMMISSION  
200 North 3<sup>rd</sup> Street  
Fargo, ND 58102  
Phone 701.476.6751 Fax 701.241.1526  
planning@cityoffargo.com  
www.cityoffargo.com

March 17, 2009

Dear Chairman Weisz and members of the House Human Services Committee,

I am writing on behalf of the Fargo Human Relations Commission to encourage support of Senate Bill 2278, which seeks to amend the North Dakota State Human Rights Act and Fair Housing Act to include sexual orientation and gender identity as a protected class. If passed, it will prohibit discrimination in housing, employment, credit transactions and use of public accommodation. The Fargo City Commission voted to support the bill on January 26, 2009 and considers it important that our State extend these human rights to all citizens of the State of North Dakota.

Many States in the Nation have already passed legislation prohibiting discrimination based on sexual orientation. The Fargo Human Relations Commission currently includes the class of sexual orientation in their Ordinance of Creation (Article 15-0201). Major employers and leaders in ND business, such as the North Dakota University System, Meritcare and Microsoft include sexual orientation as a protected class in their antidiscrimination policies.

Your support and recommendation to pass Senate Bill 2278 is greatly appreciated.

Most Sincerely,

A handwritten signature in black ink, appearing to read "Prairie Rose", with a long horizontal line extending to the right.

Prairie Rose

Chair, Fargo Human Relations Commission

# 12  
opponent  
Attachments  
with  
TEST.

Testimony Regarding SB 2278  
House Human Services Committee

Chairman Weisz and Members of the House Human Services Committee:

My name is Christina Rondeau. I represent the North Dakota Family Alliance, and I am here today in opposition to SB 2278.

I have two specific areas of concern regarding this bill. The first area simply looks at religious freedom. My second concern is that of how the use public facilities can or will be affected by this bill.

Although I am a North Dakota native, my family spent 12 years while I was growing up in another state. The community where we lived had a large sub-community of Mennonites. Members of this branch of Mennonites were very conservative, which also made them very conspicuous, because of their distinctive dress and appearance. Many of you are familiar, at least through pictures, of various Amish communities around our country. If you have visited any of those areas, you know first-hand that many Amish own and operate businesses that offer goods and services to the community, and even to the tourist industry. The same was true of the Mennonites I grew up around. I saw many of these Mennonites as friends, neighbors, even co-workers. Some of them farmed, while others owned several businesses in the larger community, and were active contributors to the local economy. They are hard-working, honest, and responsible people, particularly in their business practices that serve the local area. In their hiring practices, some of their businesses hired almost exclusively people within their church community, while others hired more openly from the secular community. Either way, no one argued with their right to limit their hiring to people who at the very least, did not openly contradict their own moral and religious convictions in a business that they owned, paid the taxes and insurance on, and invested personal capital in.

I am not Mennonite, or Amish. However, I believe most of us would agree that the freedom of these religious sects to live and interact with us through their business professions is a unique and valued part of our American culture and heritage. In addition, it represents what I believe the vast majority of Americans have traditionally understood as the freedom of religious expression, one of our most cherished and constitutionally protected rights in America. One of the beauties of our country, and our state, has always been the ability to openly integrate religious practices and convictions with our whole lifestyle, including professional and business practices. When people talk about "North Dakota" or "American" values, I believe this is one of them. Just because some people don't wear long dresses, head coverings, or beards of a certain style, does not mean they should be somehow exempt from the right to openly integrate their own deeply-held religious convictions with their business practices.

Whether we like it or not, virtually all the major religions of the world, whether Christian, Muslim or Jewish, teach that sexual behavior not only has strong moral implications, but religious ones, as well. Many are trying to spin this as a civil right, based on the assumption that sexual orientation is an inborn characteristic.

However, homosexuality has not been conclusively proven to be an inborn or immutable characteristic. I have provided information from NARTH, the National Association for Research and Therapy of Homosexuality. This organization believes in an individual's right to be gay, but also recognizes that homosexuality is a behavior. One of the attachments includes NARTH position statements, which I provided just so you can personally see how this organization views and treats individuals with various sexual orientations. The other is an article featuring Dr. Francis Collins, one of the world's leading experts and scientists when it comes to DNA research. (I apologize for the small print of these copies) As he explains in this article, heredity does influence an individual's bent toward homosexuality, in the same way as it does for a number of other behaviors, such as agreeableness, conscientiousness, or aggression. However, he also explains that in the same way that these behaviors are not "hardwired," neither is homosexuality.

My second concern regarding SB 2278 is about the use of public facilities, which is generally interpreted to mean public restrooms, locker rooms, and shower rooms open to the public. As a mother of two little girls, I, along with many others, am shocked and deeply concerned that this bill proposes granting specially protected status and equal access to a male cross-dresser who wants to use any of these facilities frequented by women and little girls. The terms "actual or perceived" sexual orientation and "gender identity and expression" are so broad as to be virtually all-inclusive of any type of sexually-related behavior or expression. For instance, how is the public display of nudity to be treated under this bill? Our current indecency laws are specifically written to protect the public, and especially children, from exposure to any number of behaviors that,

under SB 2278, could easily be defined as "gender identity and expression."

If this bill passes, there will be more than just a few families who will no longer feel comfortable or safe in taking their young children to the local public swimming pool, not to mention public restrooms.

In closing, I just wish to point out that our culture is already becoming increasingly accepting of people practicing various types of sexual orientation, whether that means same-sex, transgendered, or any other type of sexual orientation. Supporters of SB 2278 have openly admitted that many companies across our state are already going the extra mile in establishing "gay-friendly" workplaces. That does not, however, mean that other business owners, whose religious convictions may prevent them from following that same path, should be forced to do so, at the expense of being driven out of business, whether by their own convictions, or by expensive lawsuits.

Given these concerns, I again ask that you give SB 2278 a Do Not Pass recommendation.





# NARTH

National Association for Research & Therapy of Homosexuality

NARTH upholds the rights of individuals with unwanted homosexual attraction to receive effective psychological care, and the right of professionals to offer that care.

Sign up for email updates  
SIGN UP

[Home](#) [Get Involved](#) [About NARTH](#) [Main Issues](#) [News Watch](#) [Announcements](#) [International](#) [Available Resources](#) [Donate](#)

from "Born that way" theory

## "Homosexuality Is Not Hardwired," Concludes Dr. Francis S. Collins, Head Of The Human Genome Project

By A. Dean Byrd, Ph.D, MBA, MPH

April 4, 2007 - Dr. Francis S. Collins, one of the world's leading scientists who works at the cutting edge of DNA, concluded that "there is an inescapable component of heritability to many human behavioral traits. For virtually none of them is heredity ever close to predictive."

In reviewing the heritability (influence of genetic factors) of personality traits, Dr. Collins referenced the estimates of the percentage of various human personality traits that can be ascribed to heredity from the Bochart and McGue research.

The heritability estimates for personality traits were varied: General Cognitive Ability (50%), Extroversion (54%), Agreeableness (42%), Conscientiousness (49%), Neuroticism (48%), Openness (57%), Aggression (38%) and Traditionalism (54%).



Dr. Francis S. Collins

Kirk et al. (2000) in their research using a community-based cohort of Australian twins reported a heritability estimate of 30% for homosexuality. Whitehead (1999, 2006) in his extensive review of the research cites 30% as the estimate of heritability for homosexuality as well, though he views the estimate as a maximum.

Estimates of heritability are based upon careful analyses of studies conducted with identical twins. Such studies are important and lead to the conclusion that heredity is important in many of these traits. It is important however, to note that even in such studies with identical twins, that heritability is not to be confused as inevitability.

As Dr. Collins would agree, environment can influence gene expression, and free will determines the response to whatever predispositions might be present.

Dr. Collins succinctly reviewed the research on homosexuality and offers the following: "An area of particularly strong public interest is the genetic basis of homosexuality. Evidence from twin studies does in fact support the conclusion that heritable factors play a role in male homosexuality. However, the likelihood that the identical twin of a homosexual male will also be gay is about 20% (compared with 2-4 percent of males in the general population), indicating that sexual orientation is genetically influenced but not hardwired by DNA, and that whatever genes are involved represent predispositions, not predeterminations."

Dr. Collins noted that environment, particularly childhood experiences as well as the role of free will choices affect all of us in profound ways. As researchers discover increasing levels of molecular detail about inherited factors that underlie our personalities, it's critical that such data be used to illuminate, not provide support to ideologues.

Citing such dangers, Dr. Collins referred to the book written by activist Dean Hamer who declared the discovery of the God Gene (this same author also is associated with "discovering the gay gene").

Dr. Collins noted that the "evidence" in Hamer's book "grabbed headlines," but was "wildly overstated."

A reviewer in *Scientific American* suggested that Hamer's book on the God Gene should have been titled, "A Gene That Accounts for Less than One Percent of the Variance Found in Scores on Psychological Questionnaires Designed to Measure a Factor Called Self-Transcendence, Which Can Signify Everything from Belonging to the Green Party to Believing in ESP, According to One Unpublished, Unreplicated Study."

Unfortunately, much of the research in areas such as homosexuality, has been not only misrepresented in the media but by the scientists themselves through the tendency to overestimate the quantitative contribution of their findings.

Perhaps the best example of this media misrepresentation was the two studies conducted by J. Michael Bailey. In Bailey's first study, he reported a concordance rate of 52%. In a second study, Bailey reported a concordance of 20-37.5%, depending on how loosely you define homosexuality. The first study received a great deal of press. The second study received almost no media attention.

Bailey himself acknowledged probable selection bias in his first study—he recruited in venues where "participants considered the sexual orientation of their co-twins before agreeing to participate." The second study, using the Australian Twin Registry with its anonymous response format, made such bias unlikely.

Regarding the contributions of genetics to areas such as homosexuality, Dr. Collins concluded, "Yes, we

Defend the truth! Make a difference.

[JOIN](#)

[DONATE](#)

Search

[FIND A THERAPIST](#) [click here](#)

Join us at the next NARTH Convention and Training Institute in West Palm Beach, FL on November 20, 21, and 22, 2009.

DATES AND DETAILS COMING SOON

[Send Page To a Friend](#)

have all been dealt a particular set of cards, and the cards will eventually be revealed. But how we play the hand is up to us."\*

Bailey, Michael J., Michael P. Dunne and Nicholas G. Martin (2000). Genetic and environmental influences on sexual orientation and its correlates in an Australian twin sample. *Journal of Personality and Social Psychology*, 78, 3, 524-536.

Collins, Francis S. (2006). *The language of god, a scientist presents evidence for belief*, New York: Free Press.

Kirk, K. M., J. M. Bailey, M. P. Dunne and N. G. Martin (2000). Measurement models for sexual orientation in a community twin sample. *Behavior Genetics*, 30, 4, 2000, 345-356.

Whitehead, Neil and Briar (1999). *My Genes Made Me Do It! A Scientific Look at Sexual Orientation*. Lafayette, Louisiana: Huntington House Press.

Whitehead, Neil (2006). "What do first ages of SSA or OSA tell us about their origins?" In NARTH Collected Papers.

\* Dr. Steve Simon (in an email correspondence) noted quite appropriately that heritability is a measure of the ratio of two variances and is not a simple proportion. A heritability index and a proportion are calculated on different scales. In this case, however, both the data from the heritability index and the proportion support the conclusion that homosexuality is not hardwired (or simply biologically fated). Though Dr. Collins offered a 20% concordance for monozygotic twins, it should be noted that this figure is the proband concordance. This is mathematically correct. However, Dr. Neil Whitehead offered a correct pairwise concordance of 11%. For the lay audience, it should be understood that different answers will emerge with different models. However, the conclusion is the same: current data provides little evidence to support the conclusion that homosexuality is hardwired.

Updated: 8 February 2008

[Top](#) | [Home](#) | [About NARTH](#) | [Join NARTH](#) | [Donate to NARTH](#) | [Get Email Updates](#) | [Events/Announcements](#) | [Online Store](#)  
Copyright © NARTH. All rights reserved. NARTH • 1-888-364-4744 • [info@narth.com](mailto:info@narth.com)



# NARTH

National Association for Research & Therapy of Homosexuality

*NARTH upholds the rights of individuals with unwanted homosexual attraction to receive effective psychological care, and the right of professionals to offer that care.*

Sign up for email updates  
SIGN UP

[Home](#) [Get Involved](#) [About NARTH](#) [Main Issues](#) [News Watch](#) [Announcements](#) [International](#) [Available Resources](#) [Donate](#)

from About NARTH

## NARTH Position Statements

### 1. Right to Treatment

NARTH respects each client's dignity, autonomy and free agency.

We believe that clients have the right to claim a gay identity, or to diminish their homosexuality and to develop their heterosexual potential.

The right to seek therapy to change one's sexual adaptation should be considered self-evident and inalienable.

We call on our fellow mental-health association to stop falsely claiming to have "scientific knowledge" that settles the issue of homosexuality. Instead, our mental-health associations must leave room for diverse understandings of the family, of core human identity, and the meaning and purpose of human sexuality.

### 2. Gay Advocacy in Public Schools

When schools offer information on sexual orientation, the facts should be presented in a fair and balanced manner.

Groups such as the American Psychological Association currently recommend that schools censor all "ex-gay" materials, and prohibit discussion about those who have chosen to change their orientation. Respect for diversity, however, requires teaching about all principled positions. We live in a multi-cultural society where tolerance for differences is essential.

And when homosexuality is discussed, it must not cross the line into lifestyle advocacy. Ultimately, sexual lifestyle decisions hinge on matters of deeply held values. Schools should respect the right of families to convey their own social values to their children.

### 3. Pedophilia

Early sexual experiences with an older, same-sex person are commonly reported by our homosexual clients. And some studies do suggest that such experiences may be more common among homosexuals than heterosexuals; in proportion to their numbers, that is, homosexuals may be more likely to sexually abuse a same-sex minor.

However, the data remains inconclusive for several reasons.

Studies have not always been able to determine the sexual orientation of the same-sex molester (was he a heterosexual man crossing over into same-sex behavior? a bisexual? or a homosexual?) Also, clinical reports suggest that a very substantial proportion of homosexual molestation is not reported to adults or legal authorities because the child was ashamed, fearful or considered the same-sex contact with an older person to have been "consensual."

For these and other reasons, it is difficult to come to a conclusive answer on the basis of the evidence now available.

### 4. Homophobia

The term "homophobia" is often used inaccurately to describe any person who objects to homosexual behavior on either moral, psychological or medical grounds. Technically, however, the term actually denotes a person who has a phobia—or irrational fear—of homosexuality. Principled disagreement, therefore, cannot be labeled "homophobia."

### 5. Same-Sex Marriage

Social science evidence supports the traditional model of man-woman marriage as the ideal family form for fostering a child's healthy development.

### 6. On the Meaning of Tolerance and Diversity

"Tolerance and diversity" means nothing if it is extended to activists and not traditionalists on the homosexual issue.

Tolerance must also be extended to those people who take the principled, scientifically supportable view

Defend the truth! Make a difference.



Search

go

FIND A THERAPIST [click here](#)

Join us at the next NARTH Convention and Training Institute in West Palm Beach, FL on November 20, 21, and 22, 2009.

DATES AND DETAILS COMING SOON

[Send Page To a Friend](#)

that homosexuality works against our human nature.

### **7. On the Causes of Homosexuality**

NARTH agrees with the American Psychological Association that "biological, psychological and social factors" shape sexual identity at an early age for most people.

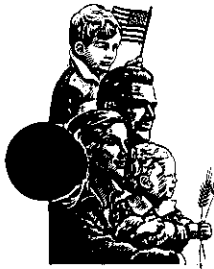
But the difference is one of emphasis. We place more emphasis on the psychological (family, peer and social) influences, while the American Psychological Association emphasizes biological influences--and has shown no interest in (indeed, a hostility toward) investigating those same psychological and social influences.

There is no such thing as a "gay gene" and there is no evidence to support the idea that homosexuality is simply genetic. However, biological influences may indeed influence some people toward homosexuality; recent studies point to prenatal-hormonal influences, especially in men, that result in a low-masculinized brain; also, there may be genetic factors in some people -- both of which would affect gender identity, and therefore sexual orientation. But none of these factors mean that homosexuality is normal and a part of human design, or that it is inevitable in such people, or that it is unchangeable.

Numerous examples exist of people who have successfully modified their sexual behavior, identity, and arousal or fantasies.

*Updated: 27 February 2008*

[Top](#) | [Home](#) | [About NARTH](#) | [Join NARTH](#) | [Donate to NARTH](#) | [Get Email Updates](#) | [Events/Announcements](#) | [Online Store](#)  
Copyright © NARTH. All rights reserved. NARTH • 1-888-364-4744 • [info@narth.com](mailto:info@narth.com)



North Dakota  
**FAMILY  
ALLIANCE**

DEDICATED TO STRENGTHENING FAMILIES

*A Trusted Voice*

*Tom D. Freier*  
EXECUTIVE DIRECTOR

TEST # 111

**House Human Services Committee  
March 18<sup>th</sup>, 2009  
SB 2278**

Mr. Chairman, and members of the House Human Service Committee, I am Tom Freier representing the North Dakota Family Alliance. I am here testifying in opposition to SB 2278.

The North Dakota Century Code and Constitution currently provide for protection from discrimination and prejudice. Constitutional rights afforded to all should not be jeopardized by the granting of special status to some.

This bill adds 'sexual orientation' to the code for the purpose of prohibiting discrimination. The definition of sexual orientation in this bill is subjective and vague. Unlike an immutable characteristic, like race or sex, characteristics which cannot change, "sexual orientation" defines conduct or behavior. The sexual orientation is self identified as perceived by the individual, and may change.

Whatever the intent of this bill might be, the unintended consequences that loom are huge. Let's look at an instance of alleged discrimination. It is as a result of the aggrieved or victim's perception. The aggrieved believes that his or her "sexual orientation" defined by his or her behavior or conduct has resulted in discrimination. At the same time, the individual accused of discrimination may have absolutely no knowledge or recognition of the aggrieved's perception of their "sexual orientation". This can result in after the fact accusations where the accused would have no protection.

Adding "sexual orientation" to anti-discrimination does more than protect an individual's rights or liberty, it creates a protected class, it grants special status. It grants that special status by elevating the rights of a limited few at the expense of the many. (2007 Census data, per handout).

Let's look at an actual case.

In *Willock v. Elaine Photography*,<sup>1</sup> Elaine Huguenin, a Christian who owns a photography business in New Mexico, declined to photograph a "commitment ceremony" between two women. Even though the two women easily found another photographer to memorialize their "ceremony," one of the women retaliated against Mrs. Huguenin

because of her Christian views and filed a discrimination complaint against her, using New Mexico's anti-discrimination law, which includes "sexual orientation." On April 9, 2008, the New Mexico Human Rights Commission held that Elaine Photography had discriminated against the women based on their sexual orientation, and ignored Elaine Photography's First Amendment rights to determine her own expressive activity and religious liberty.<sup>2</sup> To add insult to injury, the court ordered Elaine Photography to pay over \$6,000 to the plaintiff in attorney's fees.<sup>3</sup> If the Human Rights Commission ruling is permitted to stand, Mrs. Huguenin will have to choose between exercising her faith and closing her business. This case is ongoing.

How about in our schools?

In states that have "sexual orientation" in their anti-discrimination laws, groups are attempting to use the public school as a means for normalizing this behavior. These groups have developed curriculum for use in public schools to teach children as young as kindergarten, that same-sex attraction and sexual identity confusion are normal behaviors. Parents that object to these topics being taught in school are often at odds with the administration facing threats from activist groups.

While SB 2278 would appear to, it is not restricted to the conduct and behaviors of individuals. It most certainly may force recognition of relationships. While adding "sexual orientation" to the code does not protect the right to choose a relationship partner, it serves to promote the resulting relationships. It provides an avenue for same-sex couples to seek judicial redress when their relationship is not affirmed by private citizens or the government based on their "sexual orientation".

Instituting "sexual orientation" protection in the law may ultimately result in a North Dakota Supreme Court case considering making "sexual orientation" a protected constitutional class. In both California and Connecticut, their respective state supreme courts elevated "sexual orientation" as a protected class in response to their anti-discrimination laws. Both states provided significant benefits to same sex couples before the courts declared a right to same-sex marriage. SB 2278, as amended, adds numerous insurance related protections which may lead to legal challenges.

In addition, SB 2278 includes "gender identity" in its definition of sexual orientation. "Gender identity" means actual or perceived gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, regardless of the individuals designated gender at birth.

Senate Bill 2278's definition of "gender identity" allows a person, at any time to determine their own sex, regardless of their designated sex at birth. This is without appearance or reality. Because "gender identity" is based on a person's subjective feeling, there is no way for anyone to actually know another person's "gender identity"

---

without asking or being told. Asking may be seen as discrimination, and being told is no guarantee since the perception does not need to be permanent.

If the concept of “gender identity” is normalized and embraced, multiple practical and legal problems will follow. In school bathrooms and locker rooms, students and faculty would no longer have the intimacy of those settings protected from members of the opposite sex. How about if a 13 year old boy decided he was a girl, and wanted to play basketball on the girl’s team? Would the school board be accused of discriminating if they refused to allow him to use the girl’s locker room?

Another very real and common scenario, if this bill passes, might be a grandfather taking his young granddaughter to a women’s public rest room. He waits outside the rest room door. Someone looking like a male, a man, but has self-determined his “gender identity” to be that of a woman—enters the restroom. What do you do?

Even more troubling is the opportunity for a sexual predator to exploit this situation, using the protections of this bill as a shield to gain entrance to otherwise restricted public restrooms. This causes great concerns for the well being of our children.

In closing, this bill grants special status based on behavior, it will force recognition of relationships, and in a practical sense results in safety concerns for children.

Please oppose SB 2278 with a Do Not Pass.

<sup>1</sup> *Willock v. Elaine Photography*, New Mexico Human Rights Commission HRD No. 06-12-20-0685 (April 9, 2008).

Tom Freier

DEMOGRAPHIC INFORMATION – MARRIED HOUSEHOLDS V. SAME-SEX HOUSEHOLDS

State	Total # of residents <sup>1</sup>	Total # married couples <sup>2</sup>	Total # of married individuals <sup>3</sup>	% of married persons to total population <sup>4</sup>	Total # of same-sex couples <sup>5</sup>	% of same-sex couples to married couples <sup>6</sup>	Total # of homosexuals in same-sex relationships <sup>7</sup>	% of homosexual in same-sex relationships to total population <sup>8</sup>
ALABAMA	4,627,851	906,900	1,813,800	39.1%	8,100	0.8%	16,200	0.3%
ALASKA	689,478	116,300	232,600	34.0%	1,200	1.0%	2,400	0.3%
ARIZONA	6,336,755	986,300	1,972,600	31.1%	12,300	1.2%	24,600	0.3%
ARKANSAS	2,834,797	566,400	1,132,800	39.9%	4,400	0.7%	8,800	0.3%
CALIFORNIA	36,553,215	5,877,100	11,754,200	32.1%	92,100	1.5%	184,200	0.5%
COLORADO	4,861,515	858,700	1,717,400	35.3%	10,000	1.1%	20,000	0.4%
CONNECTICUT	3,502,309	676,500	1,313,000	37.4%	7,400	1.0%	14,800	0.4%
DELAWARE	864,764	153,100	302,200	34.9%	1,900	1.2%	3,800	0.4%
DISTRICT OF COLUMBIA	588,292	56,500	113,000	19.2%	3,700	6.5%	7,400	1.2%
FLORIDA	18,251,248	3,192,300	6,384,600	34.9%	41,000	1.2%	82,000	0.4%
GEORGIA	9,544,750	1,548,800	3,096,000	32.4%	19,300	1.2%	38,600	0.4%
HAWAII	1,283,388	216,100	432,200	33.6%	2,400	1.1%	4,800	0.3%
IDAHO	1,499,402	276,500	553,000	36.8%	1,900	0.6%	3,800	0.2%
ILLINOIS	12,852,548	2,353,900	4,707,800	36.6%	22,900	0.9%	45,800	0.3%
INDIANA	6,345,289	1,251,500	2,503,000	39.4%	10,200	0.8%	20,400	0.3%
IOWA	2,988,046	633,300	1,266,600	42.3%	3,700	0.5%	7,400	0.2%
KANSAS	2,775,997	567,900	1,135,800	40.9%	4,000	0.7%	8,000	0.2%
KENTUCKY	4,241,474	857,900	1,715,800	40.4%	7,100	0.8%	14,200	0.3%
LOUISIANA	4,293,204	809,500	1,619,000	37.7%	8,800	1.0%	17,600	0.4%
MAINE	1,317,207	272,200	544,400	41.3%	3,400	1.2%	6,800	0.5%
MARYLAND	5,618,344	994,500	1,989,000	35.4%	11,200	1.1%	22,400	0.3%
MASSACHUSETTS	6,449,755	1,197,900	2,395,800	37.1%	17,100	1.4%	34,200	0.6%
MICHIGAN	10,071,822	1,947,700	3,895,400	38.6%	15,400	0.7%	30,800	0.3%
MINNESOTA	5,197,621	1,018,200	2,036,400	39.1%	9,100	0.8%	18,200	0.3%
MISSISSIPPI	2,918,785	520,800	1,041,600	35.6%	4,800	0.9%	9,600	0.3%
MISSOURI	5,878,415	1,140,900	2,281,800	38.8%	9,400	0.8%	18,800	0.3%
MONTANA	957,861	192,100	384,200	40.1%	1,200	0.6%	2,400	0.2%
NEBRASKA	1,774,571	361,000	722,000	40.6%	2,300	0.6%	4,600	0.2%
NEVADA	2,565,382	373,200	746,400	29.0%	5,000	1.3%	10,000	0.3%
NEW HAMPSHIRE	1,315,828	262,400	524,800	39.8%	2,700	1.0%	5,400	0.4%
NEW JERSEY	8,685,920	1,638,000	3,276,000	37.7%	16,600	1.0%	33,200	0.3%
NEW MEXICO	1,969,915	341,800	683,600	34.7%	4,500	1.3%	9,000	0.4%
NEW YORK	19,297,729	3,289,500	6,579,000	34.1%	46,500	1.4%	93,000	0.5%
NORTH CAROLINA	9,061,032	1,645,300	3,290,600	36.3%	16,200	0.9%	32,400	0.3%
NORTH DAKOTA	639,715	137,400	274,800	42.9%	700	0.5%	1,400	0.2%
OHIO	11,466,917	2,285,800	4,571,600	39.8%	18,900	0.8%	37,800	0.3%
OKLAHOMA	3,617,316	717,600	1,435,200	39.0%	5,800	0.8%	11,600	0.3%
OREGON	3,747,455	692,500	1,385,000	37.0%	8,900	1.2%	17,800	0.5%
PENNSYLVANIA	12,432,792	2,467,700	4,935,400	39.6%	21,200	0.8%	42,400	0.3%
RHODE ISLAND	1,057,832	196,800	393,600	37.2%	2,500	1.2%	5,000	0.5%
SOUTH CAROLINA	4,407,709	783,100	1,566,200	35.5%	7,600	0.9%	15,200	0.3%
SOUTH DAKOTA	796,214	157,400	314,800	39.5%	800	0.5%	1,600	0.2%
TENNESSEE	6,156,719	1,174,000	2,348,000	38.1%	10,200	0.8%	20,400	0.3%
TEXAS	23,904,380	3,969,700	7,939,400	33.2%	42,900	1.0%	85,800	0.3%
UTAH	2,645,330	442,900	885,800	33.4%	3,400	0.7%	6,800	0.2%
VERMONT	621,254	126,400	252,800	40.6%	1,900	1.5%	3,800	0.6%
VIRGINIA	7,712,091	1,426,000	2,852,000	36.9%	13,800	0.9%	27,600	0.3%
WASHINGTON	6,468,424	1,182,000	2,364,000	36.5%	15,900	1.3%	31,800	0.5%
WEST VIRGINIA	1,812,035	397,500	795,000	43.8%	2,900	0.7%	5,800	0.3%
WISCONSIN	5,601,640	1,108,600	2,217,200	39.5%	8,200	0.7%	16,400	0.3%
WYOMING	522,830	106,200	212,400	40.6%	800	0.7%	1,600	0.3%

RED = STATES THAT HAVE FABRICATED SAME-SEX "UNIONS"

PURPLE = STATES THAT ALLOW "CIVIL UNIONS"

BLUE = STATES WITH A CONSTITUTIONAL AMENDMENT PROTECTING MARRIAGE

BLACK = STATES WITH DOMA LAWS BUT NO CONSTITUTIONAL AMENDMENT

GREEN = STATES WITHOUT CONSTITUTIONAL AMENDMENT OR DOMA LAW

<sup>1</sup> Population by State 1790-2007. [www.infoplease.com/ipa/A0004986.html](http://www.infoplease.com/ipa/A0004986.html).

<sup>2</sup> [www.gaydemographics.org/USA/Census\\_Table\\_PCT14\\_State.pdf](http://www.gaydemographics.org/USA/Census_Table_PCT14_State.pdf).

<sup>3</sup> Ibid.

<sup>4</sup> Calculated by Craig Osten

<sup>5</sup> [www.gaydemographics.org/USA/Census\\_Table\\_PCT14\\_State.pdf](http://www.gaydemographics.org/USA/Census_Table_PCT14_State.pdf).

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid., and calculated to verify accuracy by Craig Osten



Letter of Martin Wishnatsky  
The Forum, February 15, 2009

Senate Bill 2278 endorses the addition of "sexual orientation" to North Dakota's discrimination law. In the proposed legislation this term encompasses "gender identity." A sex change operation or cross-dressing will now have civil rights protection, as well as the behavior associated with the judgment on Sodom and Gomorrah.

It seems that this country, subject to an unceasing media bombardment seeking to legitimize sexual perversion, has lost its moral bearings and sense of outrage.

These "lifestyles" are pathologies which should not be legitimized and thus encouraged by state law. Sexual wickedness should not receive equal status with race, religion, and other reputable class categories.

The sexual revolution began in the 1950's with the birth of the fornication culture and accelerated with the introduction of the pill in 1960. By 1970 out-of-wedlock pregnancy had mushroomed. A decade later homosexuals began to come out of the closet and beat the drums for recognition and respect. It is time to call a halt to these sad developments, which rob the participants of their dignity and also their posterity.

What used to be called "holy matrimony" recognized that the gift of reproduction was indissolubly linked to the responsibilities of marriage undertaken between a man and a woman. Any other use of this capacity is ungodly.

What residual moral sanity remains in this state should be mustered to say no to this legislation. We have strayed too far from the old paths. "Ask for the old paths, where is the good way, and walk therein, and ye shall find rest for your souls." Jeremiah 6:16.

More sexual madness is not the kind of stimulus this state needs.

# THE ABOMINATION OF SENATE BILL 2278

---

**You shall not lie with mankind  
as with womankind:  
it is abomination.**

—Leviticus 18:22—

**For even their women,  
did change the natural use  
into that which is against nature.**

—Romans 1:26—

---

**S**exual perversion is nothing new in human history. Roundly condemned in the Bible, it destroys both soul and body. What President Obama dismissed as “an obscure passage in Romans,”<sup>1</sup> speaks very clearly:

And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working in that which is unseemly, and receiving in themselves that recompence of their error which was meet. —Romans 1:27

Only in today’s sexually-depraved culture are such practices exalted to civil rights status and special protected classes created to surround these abominations with a wall of legal protection.

Such behavior should never be encouraged, let alone legitimized by law, but should always be discouraged. The section of the human rights law which protects “participation in lawful activity off the employer’s premises during nonworking hours” is more than sufficient to cover deviant sexual practices occurring in private homes. They do not need to be explicitly written into the code and thus receive official state approval.

It is a great sin against those who engage in these practices to comfort and protect them in their sexual misdeeds. Surely there will be retribution in the afterlife for those who call evil good and thus draw misguided souls into perdition.

## Who’s lurking in the women’s restroom?

“All people, regardless of surgical status, are entitled to use facilities which comport with their gender identities regardless of whether their bodies match traditional expectations.”

—New York City Human Rights Law—

New York City madness has now come to North Dakota. SB 2278 amends the North Dakota Human Rights Act to add protection for “gender identity.”

“Gender identity” means actual or perceived gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, regardless of the individual’s designated gender at birth.

—Senate Amendment to § 14-02.4-02, N.D.C.C.—

Under this definition of protected behavior, a man, surgically-changed or not, is entitled to “identify” as a woman and use the ladies room in any place of employment or public accommodation. To say otherwise is “discrimination.” The same applies to jury service. A man who prefers to dress as a woman cannot be struck from a jury on that account. This is what the North Dakota Senate has just approved and sent to the House for consideration!

Sexual chaos may be the preferred culture in New York or San Francisco, but North Dakota?

<sup>1</sup> March 3, 2008, Nelsonville, Ohio

Beverly LaHaye  
Chairman



against #13

## SB2278 House Human Services - March 18, 2009

Good morning 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 nation's largest public policy women's organization. We are here today to oppose SB2278.

We fail to see the evidence that sexual orientation meets the criteria set forth by the U.S. Supreme Court defining Human Rights. The Court has devised a three-part test to determine whether a class of persons qualifies as a true minority: **They must be defined by an immutable characteristic (unchangeable, like skin color), they must be economically deprived, and they must suffer from a history of discrimination and political powerlessness.** Sexual orientation fits into none of these prerequisite categories. Actually, there is no scientific evidence that shows that sexual behavior is non changeable; it is also a fact that those who practice non-traditional sexual preference are largely affluent and that their activists represent one of the most powerful lobbies in the world per capita. 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 from discrimination. Special rights should not be established based on an individual's behavior, yet this is the lone intent of SB2278.

Further, the bill has no exemptions for those with personal convictions, thus forcing individuals to accept and support sexual behaviors with which they disagree. Individuals and private businesses should not be forced by the state to set aside their moral and religious principles. There have been amendments attached to SB2278 that carry exemptions for certain religious organizations. Allow us to ask the question, if it is wrong to force this policy on these organizations, is it not then wrong to force it upon all citizens?

For a moment, let's discuss the larger issue behind this proposed legislation. It is well known, that for several decades there has been a concerted effort to change the moral views of sexual behavior in our nation. The terms "sexual orientation" and "gender identity", as proposed in SB2278 are evidence of this. Indeed, if we look closely at the term "sexual orientation" itself, it is really a radical challenge to the beliefs of all major religious faiths because it attacks the notion that sexual behavior has moral dimensions.

CONCERNED WOMEN FOR AMERICA  
OF NORTH DAKOTA

At the core of this agenda is an effort to remove from our society all traditional notions of sexual morality and replace them with a post-modern concept of sexual relativism. That is to say, when it comes to sex, there is no right or wrong, all sexual preferences are "equal." This then establishes a society, by law, wherein natural distinctions between male and female are dissolved. Recent media discussions on SB2278 have mentioned that the supporters of this legislation have vigorously said that SB2278 will never have an effect on public restrooms, school dress codes, legitimate employment requirements and the list goes on and on. However, according to a statement by Mr. Marr, January 14, 2009, "If passed, this legislation will prohibit discrimination in housing, employment, credit transaction and **use of public accommodation.**" If these expected outcomes are not intended, that again begs the question of why there is need for such legislation. Is then the intent of this legislation a mandated acceptance, by law, of a particular lifestyle to the exclusion of other's core beliefs and principles?

This legislation would amount to a government mandated special protection granted to a "minority" based on their own gender definition of sexual preferences and activity. In reality, a certain chosen lifestyle has nothing to do with civil rights and everything to do with conduct. SB2278 will put people with traditional values directly in the crosshairs of official government policy. People of a different view on this issue risk an incremental loss of their First Amendment rights through this unconstitutional legislation. By instituting SB2278, our elected officials would elevate a group of people to a more protected status than anyone else, while removing the First Amendment rights of others, and that is unconstitutional.

As far as the testimonies heard of possible loss of jobs and/or place of habitation, there are already laws in place against such discrimination in North Dakota, and such laws must be enforced. Is there proof that there has been wrongdoing that cannot be remedied by existing laws? As a matter of fact, and this is well known to the members of this Committee, one cannot ask anyone who applies for job or housing any personal questions relating to marriage, sexual behavior, pregnancy etc. This then begs the question as to how these issues of "sexual orientation" have exhibited themselves to even become an issue.

If SB 2278 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. Should sexual preference now trump the rights of free speech and freedom of religion? If SB2278 is passed we should not be so naïve as to think this legislation is the end of this discussion. We only have to look at the states and nations who have applied this legislation to see that this is just the beginning of a huge effort to have the government mandate and enforce by law, public acceptance of a particular lifestyle. When the government gets entangled in legislative efforts for the sole purpose of being politically correct, the end result is not peace and tranquility, but more confusion, less freedoms and costly litigation.

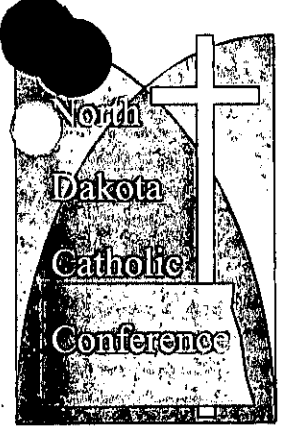
It may be claimed to be politically incorrect, or even old fashioned, but should what happens between two consenting adults in privacy even be of public and legislative discussion or concern? We think not. If we allow sexual preference to become a matter of laws and policies, it will forever change the social and moral landscape of our state, and it will reach into our workplaces, our schools, our families, our children and even our houses of worship. This will surely challenge the common sense, strength of character and founding principles this great nation and state were built on. The liberties we now **all** enjoy, regardless of sexual preference, will all stand defenseless against this discriminatory proposed law. It will have a negative effect on our society, removing all moral boundaries, and allowing further sexualization of our public square

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

Do not allow the moral agenda of North Dakota to be legislated by behavior, for if we do, there is no end to the unconstitutional legislation that will follow in the wake of SB2278.

Janne Myrdal  
State Director

2 copies #14



Representing the Diocese of Fargo and the Diocese of Bismarck

Christopher T. Dodson  
Executive Director and  
General Counsel

**To:** House Human Services Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** Senate Bill 2278  
**Date:** March 18, 2009


The Catholic Church affirms the God-given dignity of every human life and rejects unjust discrimination. Acts of violence, degradation, or diminishment toward any human person, including anyone with a homosexual inclination, are contrary to the teachings of the Catholic Church.

There is no place for arbitrary discrimination and prejudice against a person because of sexual attraction. We especially deplore violence and harassment directed against such persons. Moreover, all human persons, including those with homosexual inclinations, have a right to obtain employment and housing.

We recognize that some people have a same sex attraction. This tendency is not in itself immoral or sinful. However, like all sexual activity outside of marriage, homosexual activity, as distinguished from homosexual tendency, is morally wrong. A corollary of this teaching of the Church is that patterns of life, sometimes referred to as "lifestyles," that encourage or normalize immoral behavior are also morally objectionable. This is particularly true of those patterns that encourage, promote, or advocate sexual activity outside of marriage.

Based on these principles, we cannot support SB 2278. The unique legal status granted by the bill's definition of sexual orientation appears to encompass not only homosexual inclinations, but also other sexual activities, homosexual or heterosexual, outside of marriage. Civil rights categories should not be used to cover a particular group's activities, especially when those activities are morally objectionable. Current law already protects lawful activities outside the place of employment. This bill, however, would create special protection for a certain class of activities.

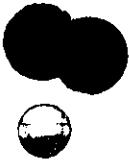
This raises serious policy questions when we consider that current law does not provide protection to other activities and thoughts. Some people might experience discrimination because of their familial status, where they live, their appearance, their weight, or their health. (The statute's definition of mental and physical disability is limited to substantial impairments.) Some people might experience discrimination because of their non-religious beliefs or their residency status. None of these activities or conditions, however, are covered under our Human Rights Act.



In addition, while we appreciate the Senate's attempts to provide exemptions for religious organizations, further review of the bill and relevant case law leads us to conclude that the current exemptions fall short of that which is needed to protect the religious integrity of churches and avoid costly and unnecessary litigation.

Senate Bill 2278, therefore, is flawed in its scope and its reach. It would establish the dangerous precedent of creating legal protection for chosen sexual activities and public expressions of sexuality while providing inadequate legal protection for religious organizations. Rejection of Senate Bill 2278 should not be construed as an act of hostility towards persons with homosexual inclinations. There is not room for that here. Rather, it should be seen as a prudential act recognizing what is good law and good public policy.

We respectfully request a **Do Not Pass** recommendation on Senate Bill 2278.



My name is Lisa McKee and I am from Fargo, ND. I am the chapter director of a new local chapter of a larger organization called United Families International. I am here to oppose SB 2278.

I am here to say that sexual orientation should not be added to the current laws on discrimination. Discrimination on the basis of gender or race is vastly different from discrimination on the basis of sexual practice.

General Colin Powell stated, "**Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient, but invalid argument.**"

**Governments should not grant special rights to the homosexual community for what is a behaviorally-based identity rather than a true genetic one.**

The definition of "sexual orientation" proposed in the bill states: "Sexual orientation" means **actual or perceived** heterosexuality, bisexuality, homosexuality, or gender identity or expression.

If they are actually homosexual or bisexual then there is a choice that they are that. I say it is a choice because there is no current research or evidence that says that they are born this way.

Wikipedia states Biology and Sexual Orientation- "**No simple cause for sexual orientation has been conclusively demonstrated, and there is no scientific consensus as to whether the contributing factors are primarily biological or environmental.** Research has identified several biological factors which may be related to the development of a heterosexual, homosexual or bisexual orientation. These include genes, prenatal hormones, and brain structure. **Conclusive proof of a biological cause of sexual orientation would have significant political and cultural implications.**"

Since there is no conclusive evidence of the cause or beginning of sexual orientation it seems to make sense that to sexual preference is a human behavioral choice that should not be given **special rights and protections** by the government.

The 14th Amendment to the U.S. Constitution is a post-Civil War reconstruction amendment. It requires individual states to provide equal protection under the law to all people within their jurisdictions. We are all granted equal protection under these laws. Anything beyond that would be **granting them special status for a human behavioral characteristic.**

My family moved here from California about 3 years ago. California was one of the first states to adopt sexual orientation in their discrimination laws. This effect I think made the towns in



California turn to not just integrating the gays and lesbians more successfully into society but actually promoting their lifestyle. In our town they had a Gay Pride Picnic, a Gay Pride Parade and other activities that seemed to honor and revere their lifestyle. You have seen in the news in California that it has turned to not be equality for all but actually somewhat of an intolerance for the traditional family. They seem to be attacking the traditional family and those who promote it while then honoring the homosexual lifestyle. I know it doesn't seem like this would ever happen in North Dakota but I saw the consequences of such an action and it is real. Do you want this for North Dakota? Do you want the homosexual lifestyle to be taught to our children in our schools, to be paraded on the streets and to be on our billboards? It would be discrimination to discourage these things in the future if you would pass this bill.

#16

## SB 2278: Predatory Heterosexuals' Dream Bill

My name is Alison Grotberg. I am here today because I am a mom. I also have a special interest in women and children who have been victims of sexual abuse.

When I read this bill, I was deeply alarmed. The broadly defined language of this bill will lead to some very disturbing unintended consequences that will create chaos and lead to the victimization of women and children in North Dakota.

I have never testified for or against a bill before, but my heavy concerns about this bill have required of me that I be here today.

I call this bill -- please listen carefully to my word choice -- "The Predatory Heterosexual's Dream Bill."

Why do I call a bill about discrimination and sexual orientation the predatory heterosexuals' dream bill? Because of the door it will open for mischief of the highest order that stems from the broad, subjective definitions in the language of this bill.

Make no mistake about it. Predators of all kinds are skilled in the ways and means of stalking and attack. They know where the fences are; they know where the vulnerabilities exist. A predator spends time studying the habits of their victim. The assaults and crimes they commit are not accidents. They are carefully orchestrated, planned, and maneuvered. They are looking for cracks in the fence. They are looking for opportunities to exploit. SB 2278 if passed into law will be the slippery slope of opportunity that will play beautifully into the predator's hand at the peril of women and children in the state of North Dakota. That's your wife. Your daughter. Your granddaughter.

Because of the subjective nature of the definitions in this bill, there is no way to objectively determine the validity of a person's claim to be what they say they are. For example, a man could decide, for the purpose of entering a woman's restroom, on any given day that he believes himself to be a woman. According to the language of this bill, it will not matter what gender he was designated at birth, he would have legal standing to call himself a woman. There will be no objective measure with which to determine whether he truly believes himself to be a woman or not. He has no accountability.

He enters the woman's restroom, no one could (or would) try to stop him. A barrier of protection has been removed, a vulnerability created as a direct result of SB 2278 if enacted. At the right moment, he will be able to choose his target and violate a vulnerable woman or child. A long-standing natural safeguard and protection woven into the fabric of our society will have been eroded.

As legislators, you must understand that once you begin down the road of subjective definitions of personal gender identity to define discrimination, you open the floodgates of what is considered discrimination. The levels and layers of misuse of the protections offered in this bill are staggering. North Dakota citizens will be the victims of the tyranny of the undefined, a tyranny augmented by fear.

## **SB 2278: Predatory Heterosexuals' Dream Bill**

Proponents of this bill will try to use blistering labels for anyone opposed to this bill. But as legislators and citizens, you must know that to have reservations about this bill or to oppose it is not to be against gay men, lesbian women, or persons of any other sexual orientation.

It means you are opposed to the application of subjective, self-prescribed, gender identities in the North Dakota Century Code which have no definable boundaries, in the language of this bill, and provide no protection from those who would use these subjective identities to victimize and perpetrate sexual crimes or enable crimes of reverse discrimination on North Dakota citizens.

To be opposed to this bill also means that you are cognizant of your responsibilities as legislators to protect all North Dakota citizens.

To be opposed to this bill means you are opposed to the unintended consequences, both realized and not yet realized, of SB 2278.

Who in this room wants to be the first to be held accountable when the first woman or child is sexually assaulted as a result of passing this bill? As a deeply concerned mom, I respectfully urge you not to recommend the passage of SB 2278.

March 18, 2009

Mr. Chairman and members of the ND House of Representatives Human Services Committee:

Thank you for taking my testimony regarding SB 2278. This bill adds "sexual orientation" to the state policy of discrimination.

As the administrator of Hope Christian Academy in Dickinson, my concern is the unintended effect that it would have on private Christian schools.

I have specific concerns with the amendments that are intended to excuse religious organizations,

"4. a. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from establishing any qualifications or hiring criteria for employees and volunteers in religious positions.

b. This chapter does not prohibit a religious organization, association, or society from limiting employment and volunteers in nonreligious positions to individuals who are of the same religion or who adhere to the religion's tenets unless membership is restricted because of race, color, or national origin.

c. This chapter does not prohibit a religious organization, association, or society from limiting access or admission to its places of worship or its parochial schools to individuals of the same religion or who adhere to the religion's tenets."

The term, "religious organization," is ambiguous. Without further clarification, we are left to speculate what a religious organization is. A Christian school should not be required to fall under the umbrella of any specific church in order to be considered a religious organization. The school that I work at is Hope Christian Academy in Dickinson. We have twelve different churches represented in our student body. We openly tell parents that the primary reason they should choose us is a spiritual one.

The term, "parochial schools," is of concern to me. As it is not defined in this bill, I went to Merriam-Webster for a definition. There it is defined as a school that is run by the church. This would indicate that only a school that is being run by one specific church would be considered in these exemptions.

The term, "religious positions," is of concern to me. Ours is a deep faith, bringing parents of average income to invest thousands of dollars to provide an alternative education for our

children. We believe that the most important part of the curriculum is not the books, but the people who work with our kids. They teach not only with paper and pencil, but with their very lives. Spiritual lessons are taught equally in the hallway as they are in Bible class. Therefore, I place equal importance on the spirituality of my school secretary as I do on the classroom teacher. In our setting, every position is considered a religious one.

Due to the ambiguity of this bill, I respectfully request a "do not pass" vote.

Sincerely,



Ronald L Dazell Jr.  
1483 14<sup>th</sup> St SW  
Dickinson, ND 58601  
Ph. 701-483-4472  
Email [ron.dazell@hcadickinson.org](mailto:ron.dazell@hcadickinson.org)

*this one*  
*Handout*  
*of*  
*Spiegel*  
*magazine*  
*#18*

TIME ONLINE

Find out more at [crucial.com](http://crucial.com) now!

Top-Quality Memory • Free Shipping • Installation Support

**crucial**

U.S. ADD TIME NEWS

SEARCH TIME.COM



INSIDE: Main | The Page | Politics | Swampland | Real Clear Politics | White House Photo Blog | Videos

## The Appalling Saga of Patient Zero

By WILLIAM A. HENRY III Sunday, Jun. 24, 2001

Print Email Share Reprints Related

Club Baths, San Francisco, November 1982 . . . When the moaning stopped, the young man rolled over on his back for a cigarette. Gaetan Dugas reached up for the lights, turning up the rheostat slowly so his partner's eyes would have time to adjust. He then made a point of eyeing the purple lesions on his chest. "Gay cancer," he said, almost as if he were talking to himself. "Maybe you'll get it too."

### Sponsored Links

**Flat stomach rule:**  
obey  
I cut out 2lbs of body fat per week by obeying this 1 old rule.  
[MegansDietingBlog.com](http://MegansDietingBlog.com)

**"Diet Seen on Rachel Ray"**  
I cut out 2lbs of body fat per week by obeying this 1 old rule.  
[FlatStomachRule.com](http://FlatStomachRule.com)

Buy a link here

### More Related

- The Graying of AIDS
- How the World Thinks About AIDS
- AIDS: A Spreading Scourge

-- Randy Shilts, *And the Band Played On*

Since the early days of the AIDS epidemic, researchers have reasoned that a handful of people -- maybe even a single individual -- bore the unknowing responsibility for having introduced the disease to North America and its first large group of victims, the homosexual community. By tracing sexual contacts, officials at the Centers for Disease Control in Atlanta in 1982 found a likely candidate: one man who, through his sexual liaisons and those of his bedmates, could be linked to nine of the first 19 cases in Los Angeles, 22 cases in New York City and nine more in eight other cities -- in all, some 40 of the first 248 cases in the U.S. The CDC acknowledged his role with an eerie sobriquet: it called him Patient Zero.

Now Patient Zero is publicly identified for the first time in a stunning new book on the AIDS epidemic, *And the Band Played On* (St. Martin's Press; 630 pages; \$24.95). Zero, says Author Randy Shilts, was Gaetan Dugas, a handsome blond steward for Air Canada, who used to survey the men on offer in gay bars and announce with satisfaction, "I'm the prettiest one." Using airline passes, he traveled extensively and picked up men wherever he went. Dugas developed Kaposi's sarcoma, a form of skin cancer common to AIDS victims, in June 1980, before the epidemic had been perceived by physicians. Told later he was endangering anyone he slept with, Dugas unrepentantly carried on -- by his estimate, with 250 partners a year -- until his death in March 1984, adding countless direct and indirect victims. At least one man indignantly hunted him down. Dugas' charm proved unailing: he sweet-talked the man into having sex again.

Dugas' identity as the peripatetic Patient Zero was confirmed last week by Professor Marcus Conant of the University of California at San Francisco, a pioneer AIDS researcher. But, Conant adds, "if it hadn't been this man, it would have been some other." Dugas' escapades are just one of many vivid and shocking stories in Shilts' impressively researched and richly detailed narrative.

Get 4 Free Trial Issues of TIME Magazine

### Top Stories on Time.com

- Daschle: Bowing to the Inevitable, or Pushed Too Fast?
- Snow Business Means No Business in London
- North Korea Reminds Obama: We're a Trouble Spot Too
- Is CBS Going Too Far with *Arranged Marriage*?
- Why Mitt Romney Should Replace Daschle at HHS

## Tired of Being Tired? »

Fight Fatigue and Support Immune System



Dr. Marcus Elliott M.D.  
Harvard Medical Doctor/Founder of FRS

"I train hundreds of professional athletes and I recommend FRS Healthy Energy to all of them!"



FRS

Try It Free

### Most Popular

Full List »

#### Most Read

- What Is Real Stimulus and What Isn't?
- Sony's Woes: Japan's Iconic Brands Strained
- The Biology of Dating: Why Him, Why Her?
- Octuplets Fallout: Should Fertility Doctors Set Limits?
- Valentine's Deals That You'll Love
- Teleportation Is Real - But Don't Try It at Home
- The Tide Shifts Against the Death Penalty
- Finding the Man Who Started the Global Recession
- After Layoffs, There's Survivor's Guilt
- The GOP Grapples with Obama's Charm Offensive

#### Most Emailed

## Get the Latest News from Time.com

Sign up to get the latest news and headlines delivered straight to your inbox.

Enter e-mail address

Submit

The article is covering AIDS full on the San Francisco Chronicle since his tales underscore that is painfully; families AIDS researchers, both the Federal Government and the gay community squandered lives and let the disease rage out of control by focusing on ideological preaching instead of public health.

As if to reinforce that judgment, the Reagan Administration demonstrated on two fronts last week how political agendas still burden AIDS policy. Secretary of Education William Bennett disseminated his department's first major recommendations on how to educate young people to avoid the disease. Bennett's 28-page pamphlet, cleared by the White House, is a model of moralizing and seems mainly to be meant as a challenge to Surgeon General C. Everett Koop, an advocate of bluntly practical counsel. Bennett's booklet suggests that schools and parents "teach restraint as a virtue," downplays the use of condoms in sex and does not even mention the importance of clean needles if injecting drugs. Critics condemned Bennett's emphasis on abstinence, noting that by 17, almost half of all boys and nearly a third of girls have had intercourse. Said Congressman Ted Weiss, a Manhattan Democrat: "It's totally out of touch with reality."

The more troubling event was a pair of resignations from President Reagan's advisory commission on AIDS two months before that body was to issue its first report on the "medical, legal, ethical, social and economic impact" of the disease. Since its appointment in July, the 13-member commission has been beset by factional squabbling and accusations that it is heavy on conservatives and light on expertise. The last shortcoming was only intensified by the departures of its chairman, Dr. W. Eugene Mayberry, chief executive of the Mayo Clinic, and its vice chairman, Dr. Woodrow Myers Jr., Indiana's health commissioner. Said Myers: "We did not receive the full degree of support from the Administration." The new chairman is not a medical scientist but retired Admiral James Watkins.

Turmoil in federal AIDS policymaking is anything but new, according to Shilts. His book quotes extensively from internal memos at CDC and the Department of Health and Human Services to show that the very officials who testified before Congress that research scientists had all the money they needed to pursue the disease were privately arguing just the opposite. He quotes a May 13, 1983, note from Assistant Secretary for Health Edward Brandt seeking new funds. "It has now reached the point," the memo reads, "where important AIDS work cannot be undertaken because of the lack of available resources . . . ((which)) will have a detrimental effect on CDC's important prevention programs." The memo, Shilts adds, was written just four days after Brandt testified before a House subcommittee that emergency funding was "unnecessary."

Shilts contends that as part of the Administration's efforts to distract attention from its inadequate financing and poor leadership, the U.S. Government "brazenly" conspired to steal credit for discovering the AIDS virus from researchers at France's Pasteur Institute. He dismisses as a myth the competing claim of Robert Gallo of the National Cancer Institute and, quoting U.S. researchers, strongly implies that Gallo stole the French strain and presented it as his own, a charge Gallo denies. Shilts labels as a "pleasant fiction" a 1987 U.S.-French political accord that settled lawsuits and deemed Gallo and France's Dr. Luc Montagnier "co-discoverers" of the virus.

Shilts, who is openly gay, is equally tough on the gay community, which, he says, transformed its civil rights movement in the '70s into "omnipresent carnality." In the face of rampant disease, he says, gay leaders resisted calling for sexual restraint, fearing that it would threaten their hard-won liberation. He adds that the owners of gay "back room" bars and bathhouses were prominent

Quotes of the Day

*"I don't think there's anyone in Russia who doesn't know what a drunk person looks like."*

KATYA KUSHNER, one of 100 passengers on a Russian airline who signed a petition claiming that their pilot was drunk before takeoff; though the pilot was eventually replaced, the airline, Aeroflot, claims that his blood tested negative for alcohol

More Quotes >

TIME

Top Stories

Tom Daschle: Bowing to the Inevitable, or Pushed

- Snow Business Means No Business in London
- North Korea Reminds Obama: We're a Trouble
- Is CBS Going Too Far with Arranged Marriage?

GET & SHARE

Today in Pictures



TRY 4 ISSUES RISK FREE!

Full Name	State/Province
Address	Zip/Postal Code
City	E-mail



CNN Headlines

- Digital TV a civil rights issue? Group says yes
- MySpace boots 90,000 sex offenders, AG says
- For Screen Actors Guild, the drama is in court

contributors to gay political groups and major advertisers in gay newspapers, and thus unduly influenced the debate. In one grim scene, a bathhouse owner tells a doctor at San Francisco General Hospital, "We're both in it for the same thing. Money. We make money at one end when they come to the baths. You make money from them on the other end when they come here."

Shilts says he interviewed more than 900 people. He lists dates for eleven interviews with Dr. James Curran, head of the CDC's AIDS program. The most poignant passages recount the first stirrings, before doctors knew there was such a disease. Shilts suggests that the first non-African victim may have been Margrethe Rask, a Danish physician who fell ill in 1976 while working in a primitive village hospital in Zaire and died of AIDS-related pneumonia in 1977. At about the time Rask succumbed, Shilts began interviewing physicians about the health implications of the gay sexual revolution. Often, in private, they noted the spread of various venereal and gastrointestinal diseases and worried about what would happen if a new disease appeared. Dr. Dan William of Manhattan warned, "The plethora of opportunities poses a public health (problem that's growing with every new bath in town." That was in 1980, just a year before the doctors learned their worst fears had come true.

**Connect to this TIME Story**

**Interact with this story**

- Buzz up!
- Facebook
- Digg submit
- Email

**Related stories**

- The Graying of AIDS
- How the World Thinks About AIDS
- AIDS: A Spreading Scourge

**People who read this also read**

- The Mystery of Borderline Personality Disorder
- Where the Recession-Proof Jobs Are
- So, Who's Your Daddy?

**Sponsored Links**

**1 flat stomach rule: obey**  
I cut out 2lbs of body fat per week by obeying this 1 old rule.  
MegansDietingBlog.com

**"Diet Seen on Rachel Ray"**  
I cut out 2lbs of body fat per week by obeying this 1 old rule.  
FlatStomachRule.com

**Lose Your Belly: 1 Rule**  
I Cut Down 2 lbs of Fat Per Week by Obeying this 1 Old Rule.  
MandysDietingBlog.com

[Buy a link here](#)

Subscribe to TIME Magazine for just \$1.99





# 19

AGAINST

Chairman Weisz, Members of the House Human Services Committee,

Thank you for your willingness to allow me to speak. I am here respectfully to speak against Senate Bill #2278. My reasons for opposing the bill are as follows:

- a. Such legislation does something which the constitution does not: It distinguishes citizens on the basis of impulse or behavior. Such a separation of persons does not serve, but rather hinders, the public good by making distinctions between citizens based not on any objective criteria, but on a subjective basis, on the basis of an internal propensity or pattern of behavior. Unlike religion, which is explicitly protected in the constitution, and unlike race, creed, or color, which are inborn, involuntary, immutable and innocuous (Peter Sprigg), distinctions between citizens on the basis of an internal impulse or motive, or on the basis of behavior (sexual or otherwise) do not justify legislative distinction.
- b. Once a legislature codifies in law the distinction of persons based on personal propensity or behavior, there is no objective place to stop the expansion of that list. The claim by individuals to seek distinction and therefore protection on the basis of personal impulse and behavior is limitless. The list could expand to include vegetarians, people with tattoos, alcoholics, men who are addicted to pornography or to the limitless sexual conquest of women. To distinguish citizens on the basis of personal impulses or behavior is to invite an avalanche of special interests, each vying for recognition and status.
- c. The fact that certain categories of behavior listed as deserving special designation is, I submit, not necessarily evidence of discrimination. It is rather evidence of the strength of a particular lobby to wield influence and seek recognition and endorsement.
- d. The effect of such protective legislation is not neutral, nor benign. It assigns favored status to those persons who receive that public label, distinction and protection, and it legislatively endorses patterns of behavior with implicit and explicit approval.
- e. Such legislation is therefore ultimately creedal in value, and violates the stated intent of the law not to discriminate on the basis of religion. Such legislation assigns favored status to one creed, one ethical system, over another. One creed believes that homosexual behavior deserves protected, favored status, and uses the power of the law to dismiss, to silence, and to label as hateful a creed which suggests that homosexual impulses may actually be evidence of a personal brokenness, or of a failure to integrate one's personhood with the biological system and structure which human beings have inherited, a system which by definition exists and survives on the complementary nature and life-creating capacity of its male and female counterparts.
- f. While the intent of the proposed legislation may be to curb injustice, it therefore actually has the opposite effect. It asserts a new injustice. It publicly endorses one creed, one ethic for human behavior, over another.
- g. It is not the state's responsibility to legitimize a particular lifestyle. All persons receive protection under the law by virtue of their status as individuals and citizens in a society. The impact of such legislation is to secure legitimacy for a lifestyle. The history of similar legislation in other contexts is highly informative and makes clear that fact clear. Such distinctions do not content themselves with gaining tolerance. They proceed by insisting on approval, public endorsement, and then proceed by accusing those who speak against such behavior of being guilty of "hate speech," who must therefore be silenced or punished.
- h. The labeling of citizens by their actions utilizes a profoundly faulty, but unrecognized assumption. It assumes that personal identity is found in and determined by one's own impulses and appetites. This departs from our historical cultural assumption that one's identity and significance are derived from a higher authority, from outside oneself. This former assumption, made by our founding fathers, makes itself evident in the proclamation that "all men are endowed by their Creator, with certain inalienable rights." In such an ethical system, one's significance is not autonomous, not derived from oneself, but is related to the structure within which one is placed.
- i. In recognizing that our "inalienable rights" are rooted outside ourselves, that they flow from a Creator, our founding forefathers did not call you or anyone else to believe in a particular creed or a specific creator. Nor do I do so this morning. Our forefathers did, however, and I would hope you would, recognize that human value is innate, but that it cannot be understood without reference to something outside oneself and greater than ourselves. (All legislation, I

would submit, is an attempt to recognize and implement this truth. The laws that you seek to pass do not merely represent the collective will of a people. They are attempts to serve what is right, what is good, and what is true. Those are categories which assume that human life and society can only function with reference to something greater than ourselves, something to which we are accountable.) I would simply point out that our current attempts to claim or to assign identity based on one's personal preference or behavior is evidence that our culture, including our legislation, has changed its foundation and frame of reference. Unlike our founding fathers, this foundation assumes each human being to be wholly autonomous and able to find personal identity internally—in his or her own impulses or behaviors—independent of the relationships and gender he or she has inherited by birth.

- j. Please also let me point out that this proposed legislation makes two more very specific assumptions, both of which deserve skeptical analysis. a) Such legislation assumes that homosexuality is inborn. Such is an assertion, despite its popularity, is not necessarily true. The studies popularly cited as evidence do not, in fact, validate those claims. This erroneous assumption coincides with a second faulty assumption: b) An unsolicited propensity toward an action justifies any action that flows from that impulse. That is an assumption, and one that does not stand under close examination. (Consider, for example, evidence regarding alcoholism. Numbers of studies suggest that genetics may be a contributing factor to alcoholism. While such an inborn propensity might have explanatory value, a propensity does not justify any behavior. If that were the case, studies suggesting a link between genes and alcoholism would be evidence that alcoholic behavior deserves our approval and our protection. Likewise, a man's unsolicited propensity to act out his lust does not make right his decision to violate his marriage vows.) Yet, by making the second assumption, we defend certain behaviors as a right deserving status.
- k. I would offer these two proposals: 1) Rather than seeking distinct and favored status for men and women by categorizing them such in legislation by their sexual impulses, attractions, or behavior, we offer far greater service simply by reasserting the constitutional rights due them as men and women who are citizens of the United States and protecting them from injustice on that basis. 2) Rather than diluting the significance of "civil rights" language by applying that language to any group of people identifiable by their personal preferences, impulses or behavior, reserve that language for those for whom that language was generated, those who have suffered systematic oppression because of their "race, color, religion, sex, and national origin."
- l. I would also raise these specific observations about this legislation:
- I fail to find clear protection for creeds, for churches: (1<sup>st</sup> Amendment Issues). How clearly does this legislation respect creeds that differ from those who seek to legitimize homosexual behavior?
  - The phrase "Gender identity or expression" (Item 19, Lines 25-26, p. 4). Such a phrase is wide-open in its interpretation and application. Would a school be charged with discrimination if it does not allow a student to attend class as a cross-dresser?
  - Rental Section 12, 14-02.5-02 Item #4 (page 9, lines 4 & 5): The existing law states that "Nothing in this chapter prevents a person from refusing to rent a dwelling to two unrelated individuals of opposite gender who are not married to each other."
  - Note the two key assumptions of that existing provision: Assumption 1) The renter's convictions of right and wrong regarding human behavior need to be respected. Assumption 2) The institution of marriage between a man and a woman fundamentally changes the meaning and nature of their relationship, and that it is a relationship to be respected and endorsed. Both of those assumptions are negated, *de facto*, by this proposed legislation.

Finally, please note that the popularity of such legislation does not make it right. It makes it popular. Further, opposition to such legislation does not make one hateful or fearful. It does not mean that one is proselytizing for or wrongly imposing one's creed on others. It means that one is securing a place for such a creed at the table of public discourse and policy.

Thank you for your time and consideration.

Pastor L. Jay Reinke, Concordia Lutheran Church (LCMS), Williston, ND  
701-570-3536, [Concordia@dia.net](mailto:Concordia@dia.net)

## DRAFT

### Homosexuality Is Not a Civil Right

By Peter Sprigg

Early in 2004, San Francisco mayor Gavin Newsom began giving out marriage licenses—illegally—to same-sex couples. One of the homosexuals who traveled to San Francisco in search of a marriage license explained his rationale succinctly: “I am tired of sitting at the back of the bus.”<sup>1</sup>

The allusion, of course, was to the famous story of Rosa Parks. Parks is the African-American woman who, one day in 1955, boarded a racially segregated city bus in Montgomery, Alabama, sat down near the front, and refused the driver’s order to “move to the back of the bus.” Parks’ act of civil disobedience violated one of the “Jim Crow” laws that enforced racial segregation in various public services and accommodations in some states.

Parks’ arrest for her courageous defiance sparked the Montgomery bus boycott, led by a young minister named Martin Luther King, Jr., which is generally viewed as the beginning of the great civil rights movement of the 1950s and 1960s. It culminated legislatively in the passage of the Civil Rights Act of 1964, banning racial discrimination in employment, housing, and public accommodations.

The stories of Rosa Parks and Martin Luther King, Jr. have become an inspiring part of American history. It’s not surprising that homosexual activists have tried to hitch their caboose to the “civil rights” train. They do this in the context of efforts to change the definition of marriage in order to allow same-sex “marriages” (by comparing same-sex “marriage” to interracial marriage) and efforts to pass “hate crime” laws (which stigmatize opposition to homosexual behavior as a form of “hate” comparable to racism). The arguments in this essay are relevant to those debates, but focus particularly on laws that would ban employment “discrimination” on the basis of “sexual orientation” (such as the federal *Employment Non-Discrimination Act*, which is regularly introduced each Congress).

This essay is not a legal treatise, but an exploration of the philosophical justification for including various characteristics as categories of protection under historic civil rights laws—and why “sexual orientation” simply does not compare with them.

#### ***Defining Terms: What Are “Civil Rights,” Anyway?***

The dictionary defines civil rights as “rights belonging to a person by virtue of his status as a citizen or as a member of civil society.”<sup>2</sup> The Bill of Rights in the United States Constitution guarantees every American the right to freedom of religion, speech, and the press, as well as “due process of law,” and gives protections against unreasonable search and seizure, “double jeopardy” (being tried twice for the same crime), and self-incrimination.

These are true “civil” rights, in that they belong to a person (*every* person) “as a citizen or as a member of civil society.” But please note well—*homosexuals have never been denied any of these rights, nor is anyone proposing to deny such rights to*

*homosexuals in the future.*

When homosexual activists talk about their “civil rights,” they are not talking about their *constitutional* rights, which have never been systematically denied to them as a class (unlike the historical experience of black Americans). Instead, they are talking about “civil rights” in the sense that the term was used in the Civil Rights Act of 1964, which laid down five protected categories in which it was illegal for an employer or banker or hotelier, and others, to practice discrimination (“race, color, religion, sex, or national origin”). Many states now have similar laws as well.

The true “constitutional” rights cited above place a restriction on the actions of *governments* in carrying out the law. And when a constitutional right is extended to a group previously deprived of it, no one else suffers any *reduction* in their rights as a result. For example, when the right to vote was extended to blacks and then to women, this did nothing to limit the right of whites or of men to vote.

Civil rights laws that bar employment discrimination, however, place a restriction upon the action of *private entities* (such as corporations) in carrying out their private business. This is why Congress rested its authority to pass the Civil Rights Act *not* on the Constitution’s guarantee of the “equal protection of the laws,”<sup>3</sup> but on its power to regulate interstate commerce.<sup>4</sup> When such a “right” is extended (for the individual to be free from “discrimination” in employment), it *infringes upon* what would otherwise be the customary right of the employer to determine the qualifications for employment. The extension of historic *constitutional* rights is a “win-win” situation, but the extension of laws against employment discrimination is more of a “zero-sum” game—when one (such as the employment *applicant*) wins *more* protection, another (the *employer*) actually *loses* a corresponding measure of freedom. It is because of this that lawmakers should be exceedingly cautious, rather than generous, about expanding the categories of protection against private employment discrimination.

Because of our national shame at the historic legacy of racial discrimination against blacks, many people have come to think of “discrimination” as inherently evil. However, the basic meaning of “discriminate” is simply “to make a distinction.”<sup>5</sup> To compare and evaluate candidates based on their education, experience, intelligence, and competence is inherently “discrimination.” The question, therefore, is not whether “discrimination” will take place—it can, it will and it must. The question for public policy is: which *forms* of “discrimination” are so profoundly offensive to the national conscience that they justify government action that interferes with the rights of employers and other private entities and gives special protections to certain classes of people?

In the Civil Rights Act of 1964, Congress answered that question by including only five categories of protection. As noted above, those categories were: “race, color, religion, sex, or national origin.”<sup>6</sup> For instance, a banker could deny an applicant a loan because the applicant was not credit-worthy, but not because he or she was Jewish or black. What do these protected categories have in common?

While there is no definitive legal answer, the most logical answer would seem to be that the case for granting legal protection against “discrimination” is strongest when based on a personal characteristic that is:

- Inborn, involuntary, and immutable (like race and color);
- Innocuous (because it does no harm to the employer, to the individual, or to society as a whole); and/or

- In the Constitution.

Is “sexual orientation,” like race and sex, a characteristic that is inborn, involuntary, immutable, innocuous, and in the Constitution? Is it, like religion (which is not inborn, involuntary, immutable, or necessarily innocuous, but is in the Constitution), a characteristic that meets even *one* of these criteria?

The only truthful answer is no.

### *Is homosexuality inborn?*

The notion that “people are born gay” is nothing less than the “Big Lie” of the homosexual movement. The widespread—and erroneous—belief that there is a “gay gene” can largely be traced to the publicity surrounding three scientific studies in the early 1990s. One studied brains, one studied twins, and one studied genes.

#### *The Brain Study*

In 1991, following the death of his homosexual lover from AIDS, researcher Simon LeVay decided to search the brains of cadavers (of six women and thirty-five men) to find a physical determinant for homosexuality.<sup>7</sup> He examined the size of a particular brain structure known as INAH3, which has been linked to sexual behavior in animals, and reported that INAH3 was larger in heterosexual men than in heterosexual women, but also larger in heterosexual men than in homosexual men. This result, LeVay concluded, “suggests that sexual orientation has a biological substrate.”<sup>8</sup>

There are numerous problems with this interpretation. For example, six of the sixteen supposedly “heterosexual” male subjects had died of AIDS—an extraordinarily large percentage in comparison to the general heterosexual population. As one analyst put it, because of this unlikely circumstance “it seems quite possible that LeVay . . . classified some homosexuals as heterosexuals.”<sup>9</sup>

Other problems included the significant overlap in the overall range of INAH3 sizes between the “homosexual” and “heterosexual” groups and the possibility that the observed effect was a result of AIDS (which caused the death of all of LeVay’s “homosexual” subjects).<sup>10</sup>

A 1993 critique in the *Archives of General Psychiatry* concluded that this and two other studies of brain structures remain “as yet uncorroborated” and noted that even if such studies *are* replicated, “we will not know whether the anatomic correlates are a cause or a consequence of sexual orientation.”<sup>11</sup>

#### *The Twins Study*

The twins study was conducted by J. Michael Bailey and Richard C. Pillard. Bailey and Pillard sought to identify homosexuals who had an identical twin. Among the study’s subjects, they found that when one identical twin was homosexual, 52 percent of the time his identical twin was homosexual as well. They took this as confirmation of the theory of a genetic component in homosexuality.<sup>12</sup>

This study also has problems, is contradicted by other studies, and falls

down on its own evidence. Remember, *identical* twins have an *identical* genetic make-up. Therefore, a study showing that 52 percent of the identical twins of homosexuals are also homosexual *proves* only one thing—that *at least* 48 percent of the time homosexuality is *not* genetically determined.

Similar twin studies, however, have not found a concordance rate for homosexuality that is anywhere near as high as 50 percent. For example, a more recent study of twins in Minnesota found “no significant genetic effects” on sexual orientation among males and some effect among females, but reached the overall conclusion that “Environmental effects were . . . more important in the aggregate than genetic effects.”<sup>13</sup> A 2002 study in *The American Journal of Sociology*, using a large, population-based sample, found a concordance rate for same-sex attraction of only 6.7% among identical twins.<sup>14</sup>

Bailey and Pillard also made no effort to control for environment in the development of the twins. The twins studied were raised in the same home, and given that they were identical in age, appearance, and natural talents and dispositions, it is not surprising that their environment and experiences (including ones that might influence the development of homosexuality) would be more similar than those of other siblings. An analysis in the *Archives of General Psychiatry* noted that this could mean that “any difference in the true concordance rates would be attributable to environmental rather than genetic factors.”<sup>15</sup>

### *The Gene Study*

Only one of the three most famous “gay gene” studies actually looked directly at genes. This was the 1993 study by Dean Hamer, a geneticist with the National Cancer Institute. Studying patterns of male homosexuality in extended families, he found a correlation between the existence of homosexual brothers and homosexuality among maternal uncles and other male relatives on the maternal side. From this, he theorized the existence of a gene influencing the development of homosexuality that is transmitted through the maternal line (that is, on the X chromosome, which men inherit from their mothers). Hamer then examined DNA from these related men, and claimed to have found “a gene that contributes to homosexual orientation in males” at a location called Xq28.<sup>16</sup>

This supposed discovery of a “gay gene” made headlines. Hamer’s numerous caveats were less widely reported. Hamer reported that “the observed rates of homosexual orientation . . . were lower than would be expected for a simple Mendelian [i.e., directly inherited] trait.”<sup>17</sup> He also admitted that not all cases of homosexuality could be explained by this gene marker,<sup>18</sup> and that no conclusion could be drawn as to what percentage of homosexuality might have a genetic link.<sup>19</sup> Finally, Hamer said there was a need to identify “environmental, experiential, or cultural factors . . . that influence the development of male sexual orientation.”<sup>20</sup>

Even with those qualifying remarks, however, Hamer’s finding remains suspect for one key reason—other scientists have been unable to replicate it. One team of researchers, who tried but failed to confirm Hamer’s findings, declared in the journal *Science* in 1999 that their “results do not support an X-linked gene underlying male homosexuality.”<sup>21</sup>

Two scientists who reviewed the data regarding biological or genetic theories on

the origin of homosexuality concluded that “the appeal of current biologic explanations for sexual orientation may derive more from dissatisfaction with the present status of psychosocial explanations than from a substantiating body of experimental data. Critical review shows the evidence favoring a biologic theory to be lacking.”<sup>22</sup>

In other words, the scientific evidence is that homosexuality is *not* inborn.

### *Is homosexuality involuntary?*

There are three aspects to “sexual orientation”: attraction, behavior, and self-identification.

Attractions are indeed “involuntary.” But people *do* choose, and can be held responsible for, what overt sexual behaviors they actually engage in. A heterosexual married man might feel sexually attracted to a woman who is not his wife, but if he acts on that attraction, he is rightly condemned for an act of adultery. The fact that his sexual attraction was “involuntary” is no excuse for failing to control his actual behavior.

Homosexuals complain, however, that in effect they are being asked to refrain from sex altogether. Yet this argument only makes sense if “homosexuals” are utterly incapable of engaging in heterosexual relationships—a contention not borne out by the research. According to the 1994 National Health and Social Life Survey, the most comprehensive national survey of sexuality ever conducted, 2.8 percent of American adult men and 1.4 percent of American adult women identify themselves as homosexuals.<sup>23</sup> But the same survey showed that only 0.6 percent of men and 0.2 percent of women report having had *only* same-sex sexual experiences since puberty.<sup>24</sup> In other words, about 80 percent of self-identified “homosexuals” have engaged in heterosexual relationships.

So homosexual attractions might indeed be involuntary, but such attractions are psychological, invisible, and secret, and therefore essentially irrelevant to public policy. Homosexual *behavior* (and the desire of homosexual activists to have official governmental affirmation of such behavior) is what is really relevant to the debate over protecting homosexuals under “civil rights” laws. Such behavior is clearly voluntary, and thus the criterion (for civil rights protection) of being an “involuntary” characteristic does not apply.

### *Is homosexuality immutable?*

There is no such thing as a former black person, nor, despite sex-change surgery, is there such a thing as a former woman or a former man, since even such surgery does not change the sexual identity inscribed in a person’s chromosomes. There are, however, thousands of former homosexuals.

The strongest scientific evidence of this was provided by one of the most unlikely sources. Robert L. Spitzer is a psychiatrist who was instrumental in pushing for the controversial 1973 decision of the American Psychiatric Association to remove homosexuality from its list of mental disorders. That event was a crucial early victory for homosexual activists.

Nevertheless, Dr. Spitzer had the intellectual honesty to accept a challenge to study the results of what is called “reparative therapy” for homosexuality. Reparative

therapy is a mental health treatment designed to reduce unwanted homosexual attractions and behavior.

Dr. Spitzer studied 200 people who had reported some measure of change from a homosexual to a heterosexual orientation. He published his conclusions in 2003:

This study indicates that some gay men and lesbians, following reparative therapy, report that they have made major changes from a predominantly homosexual orientation to a predominantly heterosexual orientation. The changes following reparative therapy were not limited to sexual behavior and sexual orientation self-identity. The changes encompassed sexual attraction, arousal, fantasy, yearning, and being bothered by homosexual feelings. The changes encompassed the core aspects of sexual orientation.<sup>25</sup>

Spitzer also notes that a survey of the literature in 2001 by another researcher found at least 19 studies that include tangible data suggesting a homosexual orientation can be changed.<sup>26</sup>

### *Is Homosexuality Innocuous?*

One of the main reasons why discrimination based on race is so widely condemned is because virtually everyone agrees that the mere color of a person's skin, in and of itself, cannot rationally be viewed as posing a threat to society. While males and females are clearly different, they are equal in essential value, and the existence of both is necessary for the survival of society. But can one say the same about homosexuality?

Some advocates of "gay rights" openly claim, as writer Andrew Sullivan has, that "homosexuality . . . is a moral good."<sup>27</sup> But there is considerable evidence that homosexuality causes tangible harms and imposes significant costs on the individuals who practice it and on society.

In fact, homosexual behavior is associated with higher rates of:

- Promiscuity
- Sexually Transmitted Diseases
- Mental Illness
- Substance Abuse
- Domestic Violence; and
- Child Sexual Abuse.

Let's look at each of these in turn.

### *Homosexual Promiscuity*

Studies indicate that the average male homosexual has hundreds of sex partners in his lifetime.

- A. P. Bell and M. S. Weinberg, in a classic study of homosexuality, found that 43 percent of white male homosexuals had sex with 500 or more partners, with 28 percent having 1,000 or more sex partners.<sup>28</sup>
- In a study of the sexual profiles of 2,583 older homosexual men published in the



*Journal of Sex Research*, Paul Van de Ven and others found that “the modal range for number of sexual partners ever [of homosexual men] was 101–500.” In addition, 10.2 percent to 15.7 percent had between 501 and 1,000 partners. A further 10.2 percent to 15.7 percent reported having had more than 1,000 lifetime sexual partners.<sup>29</sup>

Startlingly, lesbians have higher rates of promiscuity—with men—than do heterosexual women.

- The journal *Sexually Transmitted Infections* found that “the median number of lifetime male sexual partners was significantly greater for WSW (women who have sex with women) than controls (twelve partners versus six). WSW were significantly more likely to report more than fifty lifetime male sexual partners.”<sup>30</sup>

### ***Sexually Transmitted Diseases***

- Sixty-two percent of the cumulative total of reported AIDS cases among males in the United States have been in men who have sex with men,<sup>31</sup> even though only 5.3 percent of American men have had sex with another man even once since age 18.<sup>32</sup>
- Even the Gay and Lesbian Medical Association acknowledges, “Sexually transmitted diseases (STDs) occur in sexually active gay men at a high rate.” Their website notes that these include STD infections “for which no cure is available (HIV, Hepatitis A, B, or C virus, Human Papilloma Virus, etc.).”<sup>33</sup>
- *Sexually Transmitted Infections* also reported “a higher prevalence of BV (bacterial vaginosis), hepatitis C, and HIV risk behaviors in WSW [women who have sex with women] as compared with controls [women who have sex with men].”<sup>34</sup>

### ***Mental Illness***

- A 1999 study in the *Archives of General Psychiatry* found that gay, lesbian, or bisexual young people were at increased risk for major depression, generalized anxiety disorder, conduct disorder, multiple disorders, suicidal ideation, and suicide attempts.<sup>35</sup>

### ***Substance Abuse***

- The Gay and Lesbian Medical Association (GLMA) says, “Gay men use substances at a higher rate than the general population, and not just in larger communities such as New York, San Francisco, and Los Angeles.” They add that evidence suggests that “gay men have higher rates of alcohol dependence and abuse than straight men,” and “gay men use tobacco at much higher rates than straight men.”<sup>36</sup>

- The GLMA also reports that “illicit drugs may be used more often among lesbians than heterosexual women;” that “tobacco and smoking products may be used more often by lesbians than by heterosexual women”; and that alcohol “use and abuse may be higher among lesbians.”<sup>37</sup>

### *Domestic Violence*

- A 1994 study in the *Journal of Interpersonal Violence* examined conflict and violence in lesbian relationships. The researchers found that 90 percent of the lesbians surveyed had been recipients of one or more acts of verbal aggression from their intimate partners during the year prior to this study, with 31 percent reporting one or more incidents of physical abuse.<sup>38</sup>
- In their book *Men Who Beat the Men Who Love Them*, authors Island and Letellier estimate that “the incidence of domestic violence among gay men is nearly double that in the heterosexual population.”<sup>39</sup>

### *Child Sexual Abuse*

- **Pedophiles are invariably males:** A report by the American Professional Society on the Abuse of Children states: “In both clinical and non-clinical samples, the vast majority of offenders are male.”<sup>40</sup>
- **Significant numbers of victims are males:** A study in the *Journal of Sex Research* found that although heterosexuals outnumber homosexuals by a ratio of at least 20 to 1, about one-third of the total number of child sex offenses are homosexual in nature.<sup>41</sup>
- **Many pedophiles consider themselves to be homosexual:** Homosexual activists try to argue that the sex of his child victims is irrelevant to an abuser’s sexual orientation with respect to adults, but a study of 229 convicted child molesters in *Archives of Sexual Behavior* found that “eighty-six percent of offenders against males described themselves as homosexual or bisexual.”<sup>42</sup>

There is nothing innocuous about these dangerous behaviors that correlate with homosexual behavior and grave consequences that result from it.

### *Is Homosexuality in the Constitution?*

When deciding to extend “civil rights” protections of the type described in this essay, legislators are not inherently limited to categories or characteristics already mentioned in the Constitution. However, the argument in favor of such special protections is stronger for those categories that already play a role in our nation’s highest law. This is the case with regard to the five categories mentioned in the Civil Rights Act of 1964: “race, color, religion, sex, or national origin.”

The 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments to the Constitution, adopted after the Civil War, were designed to eliminate legal discrimination against blacks in the wake of over

two centuries of slavery. The 15<sup>th</sup> Amendment mentions race and color explicitly, declaring that “the right to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude.”<sup>43</sup> “National origin” would be comparable to “race” and “color” in this respect.

The constitutional amendment process was explicitly used in 1920 to give women the right to vote, which they had been denied for most of our nation’s history. The 19<sup>th</sup> Amendment, using language directly parallel to that of the 15<sup>th</sup> regarding race, declared that the right to vote “shall not be denied or abridged . . . on account of sex.”<sup>44</sup>

Constitutional reference to religion can be found in the First Amendment, which guarantees religious liberty by declaring, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>45</sup> In addition, the Constitution explicitly forbids the government to discriminate on the basis of religion in filling public offices, declaring that “no religious test shall ever be required as a qualification to any office or public trust under the United States.”<sup>46</sup>

These explicit constitutional references to race, sex, and religion greatly strengthen the historical argument for including them in civil rights laws. There is no reference to homosexuality or to “sexual orientation” in the U.S. Constitution.

In fact, the historical record shows the founding fathers considered homosexual acts to be an abominable crime. Just weeks after the Declaration of Independence, Thomas Jefferson wrote in a letter that “buggery” (i.e., homosexual sodomy) should be punished “by castration.” While at Valley Forge in 1778, General George Washington drummed out of his army a soldier who had attempted to commit sodomy with another, declaring his “abhorrence and detestation of such infamous crimes.”<sup>47</sup>

### ***Conclusion***

In summary, homosexual behavior is not inborn, involuntary, immutable, or innocuous, nor is it found in the Constitution. There is no compelling, logical basis for treating it as a protected category under civil rights laws, or for granting special protection against “discrimination” based on “sexual orientation.”

*Peter Sprigg is vice president for policy at the Family Research Council in Washington, D.C. This essay is adapted from his book *Outrage: How Gay Activists and Liberal Judges Are Trashing Democracy to Redefine Marriage (Washington, D.C.: Regnery Publishing, Inc., 2004).**

---

<sup>1</sup> Cheryl Wetzstein, “Blacks angered by gays’ metaphors,” *The Washington Times* (March 2, 2004): A3. Online. Nexis.

<sup>2</sup> *The American Heritage Dictionary*, s.v. “civil rights,” p. 246.

<sup>3</sup> U.S. Constitution, Amendment XIV, Section 1.

<sup>4</sup> U.S. Constitution, Article I, Section 8.

<sup>5</sup> *Merriam-Webster’s Collegiate Dictionary*, 11<sup>th</sup> ed., s.v. “discriminate” (Springfield, Mass.: Merriam-Webster, Inc., 2005), 357-58.

<sup>6</sup> Title VII, Civil Rights Act of 1964, PL 88-352

<sup>7</sup> Edward Stein, *The Mismeasure of Desire* (New York: Oxford University Press, 1999), 138.

---

<sup>8</sup> Simon LeVay, "A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men," *Science* 253 (August 1991): 1034.

<sup>9</sup> Stein, 197.

<sup>10</sup> LeVay, 1035-36.

<sup>11</sup> William Byne and Bruce Parsons, "Human Sexual Orientation: The Biologic Theories Appraised," *Archives of General Psychiatry* 50 (March 1993): 229, 235.

<sup>12</sup> J. Michael Bailey and Richard C. Pillard, "A Genetic Study of Male Sexual Orientation," *Archives of General Psychiatry* 48 (December 1991):

<sup>13</sup> Scott L. Hershberger, "A Twin Registry Study of Male and Female Sexual Orientation," *The Journal of Sex Research* 34, no. 2 (1997): 212.

<sup>14</sup> Peter S. Bearman and Hannah Bruckner, "Opposite-Sex Twins and Adolescent Same-Sex Attraction," *American Journal of Sociology* 107, No. 5 (March 2002): 1197-99.

<sup>15</sup> Byne and Parsons, 235.

<sup>16</sup> Dean H. Hamer, Stella Hu, Victoria L. Magnuson, Nan Hu, Angela M. L. Pattatucci, "A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation," *Science*, 261(July 1993): 321.

<sup>17</sup> *Ibid.*, p. 322.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, p. 325

<sup>20</sup> *Ibid.*, p. 325-26.

<sup>21</sup> *Ibid.*, 665.

<sup>22</sup> Byne and Parsons, 228.

<sup>23</sup> Robert T. Michael, John H. Gagnon, Edward O. Laumann, and Gina Kolata, *Sex in America: A Definitive Survey* (Boston: Little, Brown and Co., 1994), pp. 176-77.

<sup>24</sup> Edward O. Laumann, John H. Gagnon, Robert T. Michael, and Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States* (Chicago: The University of Chicago Press, 1994), pp. 311-12.

<sup>25</sup> Robert L. Spitzer, M.D., "Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Participants Reporting a Change from Homosexual to Heterosexual Orientation," *Archives of Sexual Behavior* 32, No. 5 (October 2003): 413.

<sup>26</sup> R. Goetze, *Homosexuality and the possibility of change: An ongoing research project*. Retrieved October 16, 2002, from <http://www.newdirection.ca/research/index.html>. Cited in Spitzer, 405.

<sup>27</sup> "The Ties That Divide: A Conversation on Gay Marriage with Andrew Sullivan and Gerard Bradley" (Washington, DC: The Pew Forum on Religion & Public Life), April 28, 2004.

<sup>28</sup> A. P. Bell and M. S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* (New York: Simon and Schuster, 1978), pp. 308, 309; See also A. P. Bell, M. S. Weinberg, and S. K. Hammersmith, *Sexual Preference* (Bloomington: Indiana University Press, 1981).

<sup>29</sup> Paul Van de Ven et al., "A Comparative Demographic and Sexual Profile of Older Homosexually Active Men," *Journal of Sex Research* 34 (1997): 354.

<sup>30</sup> Katherine Fethers et al., "Sexually Transmitted Infections and Risk Behaviors in Women Who have Sex with Women," *Sexually Transmitted Infections* 76 (2000): 348.

<sup>31</sup> Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report*, 2005 (revised June 2007); Vol. 17, Table 17, p. 36.

<sup>32</sup> Edward O. Laumann et al., *The Social Organization of Sexuality: Sexual Practices in the United States*, Chicago: University of Chicago Press, 1994, p. 298.

<sup>33</sup> Vincent M. B. Silenzio, MD, "Ten Things Gay Men Should Discuss with their Health Care Providers: Commentary," online at: <http://www.glma.org/news/releases/n02071710gaythings.html> (accessed November 4, 2003).

<sup>34</sup> Fethers et al., 345.

---

<sup>35</sup> D. Fergusson, et al., "Is Sexual Orientation Related to Mental Health Problems and Suicidality in Young People?" *Archives of General Psychiatry* 56 (October 1999), p. 876.

<sup>36</sup> Silenzio, op.cit.

<sup>37</sup> Katherine A. O'Hanlan, MD, "Ten Things Lesbians Should Discuss with their Health Care Providers: Commentary," online at: <http://www.glma.org/news/releases/n02071710lesbianthings.html> (accessed November 4, 2003).

<sup>38</sup> Lettie L. Lockhart et al., "Letting out the Secret: Violence in Lesbian Relationships," *Journal of Interpersonal Violence* 9 (1994): 469-492.

<sup>39</sup> D. Island and P. Letellier, *Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence* (New York: Haworth Press, 1991): 14.

<sup>40</sup> John Briere, et al., eds., *The APSAC Handbook on Child Maltreatment* (Thousand Oaks, California: Sage Publications, 1996), pp. 52, 53.

<sup>41</sup> Kurt Freund, Robin Watson, and Douglas Rienzo, "Heterosexuality, Homosexuality, and Erotic Age Preference," *The Journal of Sex Research* 26, No. 1 (February, 1989): 107.

<sup>42</sup> W. D. Erickson, "Behavior Patterns of Child Molesters," *Archives of Sexual Behavior* 17 (1988): 83.

<sup>43</sup> U.S. Constitution, Amendment XV, Section 1 (1870).

<sup>44</sup> U.S. Constitution, Amendment XIX (1920).

<sup>45</sup> U.S. Constitution, Amendment I.

<sup>46</sup> U.S. Constitution, Article VI.

<sup>47</sup> Cited in Michael P. Farris, Jordan W. Lorence, Joshua W. Carden, Brief *Amicus Curiae* of the Center for the Original Intent of the Constitution in Support of Respondent, *John Geddes Lawrence and Tyron Garner v. The State of Texas*, Supreme Court of the United States, No. 02-102 (February 18, 2003): 8-11.

AGAINST #20

Chairman W. [unclear] and members of the Home Visitation Services committee, thank you for allowing me the opportunity to express opposition to SB2278.

My name is Suzanne Bowman. I come from Jamestown, ND. My husband is senior pastor of Victory Lutheran Brethren Church. I am a stay-at-home mother of four sons.

I testify from my vantage point as a pastor's wife. It is an interesting role that of being a pastor's wife—effectively it means, 'unpaid staffer'. I cherish the role of pastor's wife, but in light of this bill and its amended language, my role seems conspicuously vulnerable as it relates to language such as aiding, abetting, and inducing discrimination. Those appear to be very loaded terms and I suspect subjective in legal interpretation. The Senate passed an amendment which provided some protection for religious organizations and religious professionals as they *rightly* discriminate behavior that never has been and never will be accommodated according to scripture. So seemingly, the clergy's free speech and actions have a measure of immunity from litigation as long as they stay within the boundaries of church affairs.

But, where does that leave me, or any number of others with deeply held similar convictions who don't happen to be clergy? What rights are in place for religious based for profit businesses such as bookstores, online dating services or even day care centers? There are many different parachurch ministries that do not fall under the religious exemption clause tacked on to this bill. For instance, consider a YMCA, or properly called a Young Men's *Christian* Association has a transgender individual insist on using the shower room of their choice regardless of actual biology. Can you imagine the shock of parent's escorting their 2<sup>nd</sup> grader through that scene? And just what is the business manager to do? They are not offend the transgender person or they would never withstand a legal challenge thanks to SB2278.

Promoting special rights for a special group inherently requires diminishing rights from others. I think it is a gross mischaracterization of those who oppose special rights based on sexual orientation as being motivated by homophobia. *My sense is that the opposition is simply vested in protecting civil liberties for all of us regardless of the homosexual issue.*

I frequently minister a listening ear for a woman in our church who has four children from a marriage with a man who informed her three years ago that he has always wished to be a woman. He is currently undergoing surgical transformations and hormone treatments to attain his desires. So this woman shares custody of her elementary school aged children with this gender non-specific person who insists on being the children's 'other' mother. And no one wants to be the father. What is merely theoretical for most of us in this room today is unbelievably difficult and painful for this broken family. As the law currently stands, this mother has equal protected status with her former husband, wherein disputes arise. I believe SB2278 proposes to elevate her former husband's status while her own legal standing would actually diminish.

While this bill SB2278 specifically addresses employment issues, public accommodations like shower rooms and restrooms, and housing law, the effect of creating a new designation of protected status for a select minority has systemic ramifications on all matters of law. Common-sense and general goodwill among neighbors would no longer be the dominant rule of thumb. This bill, as unnecessary as it is, would open the door to intimidating employers, the clergy and generally anyone opposed to a radical redefinition of societal norms whether in the workplace, the schools, and eventually, even the church.

# 21

Testimony Before the North Dakota House of Representatives Human Services  
Committee 3/18/2009

By

William Schuh

Honorable Members of the House Human Services Committee  
Please Vote Do Not Pass on SB 2278

There are many serious problems with SB2278:

1. SB 2278 gives special state recognition, status, and protection normally accorded to intrinsic human characteristics like gender, race and age, to behaviors which are a matter of inclination, impulse, decision and choice, as implied by the word "preference."
2. **SB 2278 elevates the choice of a lifestyle that includes some disordered acts, many of which medically dangerous and traumatic, special state recognition as civil liberties.** Some of the implied acts have been the primary vectors for spreading dread diseases like AIDS through through the world populace.
3. **SB 2278 would insure the right those those sexually attracted to the same sex, and acting on that attraction, to jobs mentoring youth in public education, social services, and virtually all non-religious areas of employment.** It would guarantee their right to act as wrestling and basketball coaches where they would be in close contact with youth in locker-room environments. It would plausibly ensure their right to employment or voluntary mentoring roles in non religious organizations such as big brothers (in Minneapolis a court ruled that parents could not be told if big brothers were homosexuals). It would guarantee their right to act as youth counselors, or at the least the platform for obtaining those rights in the future. Many critical areas of youth mentoring will be affected.
4. SB 2278, in defining "sexual preference" as a specially protected civil liberty, is establishing it as a "legitimate" and valued lifestyle. This further insinuates that "wide open" sexual practices are now accepted as the norm, and invites further expansion. Where do the definitions stop? This implied value will resonate throughout public education and will serve to legitimize the homosexual lifestyle to the youth of our state. It will undercut moral teaching in youth formation.
5. The incremental nature of the path this bill initiates must be clearly understood. The limiting provisions of this bill clearly cannot stand as they are. If established in law, they will will be further modified in the future. SB2278 will serve as a platform for further advancement of measures legitimizing varying sexual lifestyles, and for suppressing those who speak against that life style. **It will lead, eventually, to the overturn of the definition of marriage.** It has been well demonstrated in other states that the right to marriage status is high on the homosexual agenda. The "grey" areas of this bill will be well explored by well funded advocacy groups, costing many the expense of defense. Civil Liberty Commissions in Bismarck and Fargo have already shown a strong

inclination to approve homosexual marriage and will be biased toward homosexual claims. Subjects of litigation will be further subjected to the biases of judges.

6. In granting exemption only to "religious" organizations, SB2278 implies that all morality belongs only within the Church doors and has no place in society at large. It also relegates religious moral beliefs to the "fringe" of the social order. But our children and families live outside of the church doors.

7. Many critical state occupations, state national guard, jailers, care givers for helpless people, where workers have critical power and authority may be affected.

8. Do workers really have the right to cross dress in the work place? Does having one's body surgically altered voluntarily because of a compulsion entitle one to use the other gender's restroom, or demand that a separate restroom be provided?

This is a very bad bill, and will do much to deconstruct social order in North Dakota

We all have a relative, a friend, or work colleague who has chosen this lifestyle. They, like anyone else, should be protected from violence and harassment under the law, and they are. **But the law should never specifically protect their right to do what is wrong.**



# Kids learn bleak numbers

## Doctor tells BHS classes about homosexual health problems

By JEFF OLSON, Tribune Staff Writer

If Dr. Gaylord Kavlie intended to shock sociology students at Bismarck High School on Monday, he might well have

Kavlie, a Bismarck surgeon, used most of a 50-minute class to tick off numbers, studies, diseases and symptoms that plague the

nation's homosexual community. The lecture was presented as the second half of class study of homosexual lifestyles.

Last month, Lola Huwe, a mother of a lesbian, was in class to plead for tolerance, understanding and fair treatment of homosexual teen-agers. Several parents complained Huwe promoted homosexuality and asked the teacher Paul Kranz, to address medical problems in the homosexual

community. One of the parents, Rev. Sam Freshwater of Washington Heights Community Church, recommended Kavlie.

"After class," said sophomore Britt Tvenge, "kids said the facts he gave were really gross. We were surprised about some of the things he said — the diseases they get."

"The shocking and enlightening facts," Kavlie said, "are facts like:

(More on DOCTOR, Page 8A)

on obitu...

# Doctor: No parents complain about Monday's presentation

FROM PAGE 1A

■ The average homosexual male lives to age 41 and the average age of a homosexual male dying of AIDS is 39.

■ Just 1 percent of homosexual males live to age 65 and homosexual males are 5,000 times as likely to get AIDS as are heterosexual males. And from the same 1993 study by the Family Research Institute, 70 percent of homosexual males contracted one or more sexually transmitted diseases over a 13-year period.

The study, he said, concentrated on obituaries of 6,200 deaths in the gay community gleaned from 16 different gay newspapers.

Amy Zahn, also a sophomore, said, "A lot of it was very hard to understand the medical terms. He'd use a high tech word and say it meant this, then used another high tech word to explain."

High-tech vocabulary or not, Britt said students understood what Kavlie was talking about. And they knew his point of view. He cited statistics from journals, medical studies and previously published media accounts but the first thing he told them was his conservative viewpoint.

"The homosexual community wants you to believe this is a normal, healthy lifestyle," Kavlie said. "I'm here to tell you it's not. Not from what I've seen and read."

After the last of four presentations during the day, Kavlie told the Tribune he spent three weeks

putting together his material. One of his primary reasons for speaking



**Kavlie:**  
Has figures

to tell what a happy life homosexuality is without the whole truth. That's where I come in. I tell the other side.

His lecture was short on facts about homosexual women "because there are more homosexual men than women and most of the studies have been done on homosexual men."

The most important fact about AIDS, Kavlie said, is everybody infected with HIV will die and it's 100 percent preventable if you do not have premarital sex and practice monogamous sex after marriage.

So how many homosexuals are there in the United States? Kavlie said a common claim is that 10 percent of the male population and 5 percent of the female population are homosexual. That statement came from an old Kinsey Report

"but there are no other studies to support that. No reliable survey comes close to those numbers."

Supportable numbers fall somewhere between 8 percent and 3 percent for males but probably less than 2 percent, Kavlie said. Halve that number to count homosexual women.

"Mrs. Huwe told these students homosexuality is a normal lifestyle, a healthy lifestyle and it's not a matter of choice," Kavlie said. "Those statements are scientifically incorrect."

BHS Assistant Principal Rita Kelly attended one of the sessions and said it's important for students to understand the risks of homosexual behavior. There were no complaints from parents Monday and she said, as happened last month, some students chose to go to the library rather than attend the optional class.

Huwe said she stands by her presentation. "I think it (homosexuality) can be as healthy. I have a lot of gay and lesbian friends. They're healthy, some are unhealthy but some of our heterosexual friends are unhealthy too."

Homosexuality is natural for homosexuals, Huwe said, "how could it be with all the discrimination, with all that's happening today. We need to show more love and compassion, especially at this time of year."

Love and compassion are fine, Kavlie said. "But I can't condone the lifestyle which is detrimental to health."

Mr. Chairman and Members of the Committee,

All of us have friends or relatives who are homosexual, and we treat them with the same respect we give to everyone else we know. SB 2278, however, will grant special legal protection to some people on the basis of the nebulous term "sexual orientation." I am here to oppose it.

The first problem arises in Section 2, in the definition of gender identity: "actual or perceived gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual." The term gender identity is ever changing. When we were young, there were two genders. Now some people say there are five; some people say there are many more. The website *eMedicine* defines gender identity "as a personal conception of oneself as male or female (or rarely, both or neither). It is intimately related to the idea of gender role, which is defined as the outward manifestations of personality that reflect the gender identity. Simply put, gender identity is a self-label...." (<http://emedicine.medscape.com/article/917990-overview>)

If gender identity is a self-label, will the law provide special protection to other "personal conceptions of oneself" as the term gender identity continues to evolve? Will adulterer, prostitute, cohabiter, and pedophile all receive special protection as gender identity self labels?

Recognizing "sexual orientation" as a special category of person under the law will take the state down a path similar to what is currently happening in Canada. Here are excerpts from an article found at this website: (<http://stephenboissoin.blogspot.com/2008/10/canadian-human-rights-commissions-bear.html>).

"A Protestant minister and a Roman Catholic priest who edits a Catholic magazine are in the crosshairs of Canada's "human rights" commissions.

"In Alberta, Rev. Stephen Boissoin has run up almost \$200,000 in legal costs, defending himself from the provincial "human rights" commission. In Ontario, Fr. Alphonse de Valk's monthly magazine, *Catholic Insight*, has incurred \$20,000 in legal fees while awaiting a ruling from the commission as to whether he and his magazine are guilty of promoting "hate."

"What crimes did they commit to place them in such jeopardy?

"Six years ago, Rev. Boissoin wrote a letter to his local newspaper, *Red Deer Advocate*, expressing his opposition to "the homosexual machine that has been mercilessly gaining ground

in our society since the 1960s” (for the full text of the letter, see <http://canadianpastor.blogspot.com/>). And *Catholic Insight*’s offense was to publish the church’s teachings on sexual morality. In both cases, offended homosexual activists complained to provincial “human rights” commissions, and the machinery of censorship was set in motion.

“The Alberta Human Rights Commission has ordered Rev. Boissoin to pay \$7,000 to the offended party, to write a public apology for publication in the *Advocate*, and never again to say or write anything critical of homosexuality in any public venue, including the Internet—a lifetime gag order. The gay activist plaintiff, Boissoin said, ‘has told me in person that I need to be reeducated.’”

“It may seem natural to most of us for a Catholic magazine to publish articles about Catholic teachings, but that’s what plaintiffs are trying to stop *Catholic Insight* from doing.

“‘They’re trying to put us out of business, harass us, cost us money,’ Fr. de Valk said. ‘Our magazine is hate literature, as far as they’re concerned. We haven’t had a hearing in front of the commission yet, but we’ve already spent \$20,000 fighting nuisance actions.’”

“Fr. de Valk tried to explain how such things could happen in Canada.”

“‘The whole idea of moral ineptitude is no longer prevalent here,’ he said. ‘What we see in Canada is not a full-blown persecution, but a very quiet strangulation of Christians.’”

“‘In 1995 the Canadian Supreme Court ruled that ‘sexual orientation’ was covered by the Charter [of Rights and Freedoms], and they’ve been working on it steadily ever since, step by step. The judiciary has played an enormous role in that.’”

Sexual orientation issues also affect schools. Renee Doyle, a concerned Minnesota parent, wrote a letter explaining what is happening there. “Pro-homosexual materials are already being included in school programs, such as sex education and anti-bullying efforts. The Gay, Lesbian and Straight Education Network (GLSEN) and Parents, Family and Friends of Lesbians and Gays (PFLAG) are involved with these programs. Students are taught they are “hateful” if they are opposed to homosexual behavior for any reason. Homosexual behavior must be accepted by students as normal and healthy, or they are flagged as bigots.”

On the surface SB 2278 may seem simple, but it has many unintended consequences, especially in regard to First Amendment rights of freedom of speech. I urge you to recommend Do Not Pass.

**Testimony supporting SB2278**

Chairman Weisz and Members of Human Services Committee:

My name is Jenny Buell. I am representing families in North Dakota. All families. Eight years ago my nephew informed us that he was gay. He was still the same young man that we had known and loved for 18 years. Nothing changed except for our knowledge of his sexual orientation.

Since then we have learned about this population, and how unfairly they are treated. They do not want "special" treatment. They want to be treated like everyone else. That is what SB2278 is about.

I urge you to support this simple legislation. *All* families in North Dakota will be affected by this bill. Discrimination is never okay.

Thank you.

24

**Committee Testimony – House Human Services Committee**

**Wednesday, March 18<sup>th</sup>, 2009 – SB 2278**

**Clint Fleckenstein – Bismarck, North Dakota**

Ladies and Gentlemen of the Committee, thank you for hearing my testimony. I regret that I'm unable to appear in person; my job requires that I be on the road today, so I must submit my remarks to you today in writing instead. I have a great deal of concern about this bill, and I hope to convey these concerns in a concise and respectful manner.

First, I oppose this bill, SB 2278, as a Christian because its goal is an assault on my faith. I have no doubt that the activists pushing for the status afforded the choice of a homosexual lifestyle by this bill have no problem elevating their "rights" to their choice above my Constitutionally protected right to my faith and "the free exercise thereof" granted by the First Amendment. Rather, this bill is merely a "foot in the door" to begin forcing acceptance, willing or otherwise, of their choice of lifestyle.

Like many young homeowners in North Dakota, I purchased an older home through the First-Time Home Buyer Program. I purchased a home with an apartment in the basement in order to use to rental income to afford my mortgage payments. As a result I've shared a great deal of my living space with those who rent the basement: the laundry room, storage area, garage, and yard, for example. This makes it more of a roommate arrangement, since by renting the apartment I'm opening my home to whoever dwells in the space below. Because of my faith I wish to be careful in who my roommates may be, and this bill will give someone choosing a homosexual lifestyle to bully me into accepting them against my will. But it gets worse.

I now have a new family, a wife and two little boys ages one and two. My wife and I are Christians; we believe that homosexuality is wrong. We don't believe so because we find it personally offensive, or because any government entity tells us; rather, we believe the Bible and its clear position that homosexuality is a sin against God. It is our right to believe so according to the First Amendment, and to live our lives accordingly. We don't want our little boys exposed to this sort of aberrant behavior. This bill, however, would force us to open our home to someone who practices this lifestyle choice regardless of our wishes to protect our family from it. In order to protect my home, my family, and my right to my faith, I must urge you to vote against this bill.

Second, I also oppose this bill as an entrepreneur. I'm a photographer and have performed services for weddings in addition to my full time job. This bill would also provide for bullying against me as a

small businessman. Take, for instance, the example of Elaine Huguenin of New Mexico. Like me, she is a photographer and Christian. In 2006 she was approached by a lesbian couple wanting her to photograph their "commitment ceremony." She declined on the basis that it was against her Christian faith to participate in such a thing. Instead of hiring another photographer, one of the lesbians proceeded to file a civil complaint against the Huguenins under New Mexico's state anti-discrimination laws. Not only is this woman's Christian faith now under attack, but she has to shoulder the financial and emotional burden of being hauled into a Human Rights hearing and facing potential punitive damages. Even if she wins, she must spend her time and money defending herself for simply choosing to exercise her faith as guaranteed by the United States Constitution. All of this nonsense is the result of New Mexico granting civil rights to a behavior. As this bill becomes a consideration here in North Dakota, I wonder: am I going to be the next photographer to make national headlines as soon as I refuse to photograph a homosexual couple, ceremony, or event?

I believe one of the insidious goals of this bill is to provide homosexual activists a tool with which to bully small businesses into accepting their lifestyle. Regardless of a person's decision to hire, fire, or promote a person in their business, the status given to people based on their sexuality or "gender identity" would allow them to threaten the business with litigation or harassment under the law. I say again, even if the business involved has absolutely no fault, they will still be forced to defend themselves. How many small businesses can afford to spend time and money fighting off such an agenda? If this bill became law, it would be possible to force those businesses to give in simply to avoid costly legal battles. These activists could win numerous victories without ever seeing a courtroom, simply by bludgeoning their targets with threats of "civil rights" complaints.

What if a day care provider suddenly has a problem finding customers because their clients discovered a homosexual employee was changing their infant's diapers? Does the day care provider simply fold up shop in the name of civil rights? It's not the employer's fault that their customers are fleeing, yet they have no recourse. If someone purports to consider themselves a woman though biologically a man, do they get to use the women's restroom or locker room with all their female coworkers because the law protects their "gender identity?" Is it going to be easy to retain female employees with such behavior enforced by law? Remember, we're talking about granting civil rights to people who define themselves by their sexuality. Anyone who wants to grant rights based on sexuality but leave sex out of the discussion is being dishonest. They also don't want to discuss how their sexual choices affect others, especially in a workplace setting. What happens if rights granted to their choice in sexuality make someone else feel sexually harassed or uncomfortable in the workplace? An uncomfortable employee or employer has no advocacy in this matter, yet there are any number of groups willing to ride to the legal rescue of someone suing for their sexual preference. Does he/she with the most lawyers win?

Finally, I oppose this bill as a citizen. Regardless of one's faith or views on homosexuality or issues of perceived gender identity, this bill seeks to define civil rights based on a choice of behavior. As members of this legislature, please consider whether you want to start North Dakota down that slippery slope. Once you grant special status to one behavior, you've set precedent for any number of behaviors to apply for that same status.

By affording legal status to a behavior choice, this bill can be used as a blunt instrument to cover any number of situations. For instance: what if someone claims their choice of personal attire is part of their sexuality? Does that give them the right to ignore an employer's dress code? Employers desire a measure of professionalism in their employees...what if a person chooses to assert a flamboyant demeanor as part of their sexuality? Are these things protected by this bill should it become law? Does an employer need to pay his way through the legal process to determine this?

Consider the definition set forth in this bill: *“Sexual orientation” means actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression.* (emphasis mine) This puts the activists in the driver's seat on this issue. They can claim whatever they want as an “expression of their gender identity” when going after a landlord, a small businessman, or whomever they see as a threat to their choice of lifestyle and behavior, and this definition would give them the legal tool to do so.

There is no shortage of activists trying to promote this agenda. They have the resources to bully anyone who disagrees with them by forcing costly legal battles. They're the reason this legislation is even appearing in your committee today. Yet those of us who wish to keep our faith, families, homes, or businesses from being steamrolled by this agenda have no such advocacy. Should this law pass, we will have no defense against a movement which seeks to codify its behavior choices against the will of the people in the guise of “civil rights.”

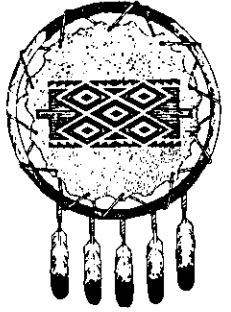
It is for these reasons that I oppose this bill as a Christian, as an entrepreneur and member of a small business, and as a North Dakota citizen. As a Christian I see this as a direct assault on my faith and an attempt to trump my First Amendment rights. As a photographer I see this as a means to force me to perform work I don't want to do. As a citizen I see this as a legal nightmare, fraught with opportunity for exploitation to advance an agenda as well as setting precedent for any number of behavior choices to apply for special status under the law. I also think the law is vague and allows for any behavior or lifestyle choice the claimant “perceives” to be part of their “orientation” or their “identity” to be grounds for pursuing legal action against any business or individual who doesn't agree with them or grant them special privilege.



Thank you for your time in reading my testimony. Hopefully I've followed correct procedure; this is the first time I've addressed a legislative committee in writing. It's exciting to be a part of the process of our government, and I pray for the work you do on our behalf as members of our legislative body. I ask that you please carefully consider the views I described above when making your decision on this bill's future.

Clint Fleckenstein  
PO Box 3056  
Bismarck, ND 58502

# 26



UNITED TRIBES TECHNICAL COLLEGE  
3315 UNIVERSITY DRIVE  
BISMARCK, NORTH DAKOTA 58504 • PHONE 701-255-3285 • FAX 701-530-0605

**Testimony on SB 2278  
Regarding Prohibiting Discrimination Against Individuals  
Sexual Orientation**

**Before the North Dakota House Human Services Committee**

**March 18, 2009**

**David M. Gipp, President  
United Tribes Technical College**

Mr. Chairman and members of the Committee:

This testimony is in support of SB 2278, which seeks to add the simple phrase of "sexual orientation" to the categories of individuals for which discrimination in employment, housing, public accommodations, state and local government services, and credit transactions are prohibited in North Dakota.

For a number of years, United Tribes Technical College has quietly put "sexual orientation" in its policy of non-discrimination for employment opportunities at our College. We do not advertise this policy, but instead seek to ensure that those applying for employment at our College are not discriminated against because of their sexual orientation. Our policy is consistent with Lakota culture that accepted those with same-sex relationships in our communities.

I believe that this is a long-overdue addition to our North Dakota human rights law. This change to our human rights law simply recognizes what most other states recognize: that personal relationships between members of the same sex are a part of the fabric of our society, and such persons who have such relationships deserve to be treated fairly and without discrimination in matters of employment, public accommodations, housing, public services and credit transactions. This change in the law does not change the recently adopted amendment to the State constitution that defines marriage as between a man and a woman. It does recognize that state citizens who are in a same-sex relationship should not be treated as second-class citizens.

For these reasons, I strongly support the passage of SB 2278.

AGAINST  
#27

Testimony  
2009 House Standing Committee on Human Services  
March 18, 2009

Dr. Ross Reinhiller

Chairperson Weisz, Vice Chairperson Pietsch, and Members of the Committee:

Thank you for giving me a few moments of your time. Before the committee is an important bill concerning discrimination on the basis of sexual orientation. I applaud the intention of this bill. I believe it is the desire of the sponsors of SB2278 and of the State Senate to see that all people receive equal protection under the law. My concern is that SB2278 does not achieve the intended purpose but instead grants special status not equal status on the grounds of a person's self perception. Though the bill itself addresses actual or perceived sexual orientation, the implication is of a greater issue which is: "Does a self perceived condition or orientation constitute a defensible human right?" The decision of this committee and the vote of the State House will answer this question.

In the world in which I live philosophical and theological questions is normal fare. As a minister I deal with both the theoretical and the practical implications the question. There is always a pull to do what is most gracious and merciful without fully exploring what is just. As much as I admire you and your service to the people of North Dakota, I am not certain that the Senate fully explored the implications of voting into existence the answer to the greater question. Passing SB2278 will say that self perceived conditions or orientations are a defensible human right and therefore must be protected from discrimination.

I believe the passing of this bill will set a precedent that has not fully been explored. Until the greater implications and application of defining self perceived conditions and orientations as a defensible human right are explored I urge this committee to act on the side of caution.

Human Services Committee:

28

FOR

I originally moved to Grand Forks back in 2005 from Minnesota where I started working for Amazon.com. At first, everything was great, I was a high performer and they even promoted me and had me train in new employees because of my active participation and metrics. Shortly after changing my name in August 2006 as a process of gender transition, I approached HR with all the appropriate documentation to change the name on their records. This is a process that normally takes 2 weeks and it had been done for many of the women that got married in my time there.

However, after repeatedly following up with them for 3 months they still were unable to make this change. Because of this, I advised them that this was a legal order and if they would not change it that legal action would be necessary. It was only after this that, 2 weeks later, their records were changed. After that, things degraded very quickly, management became increasingly critical of my work even though I was still performing at the same levels and started mentioning that if my performance did not improve that they were going to let me go. This was something that none of the other employees of my position (including the ones performing less than me) were told. Shortly after that started, there were rumors starting to go around at work about me, this only inflamed management more and they became even more critical.

Eventually, because of the hostile work environment, I eventually resigned when I was offered another job at the company I work for now in Fargo.

When I moved down here, I attempted to change doctors to the local endocrinologist that is known for his work with transsexual patients, Dr. Juan Munoz. At first, he was unwilling to treat me because I had not seen a therapist and said that my previous doctors recommendation was not enough. This was odd because that was not a requirement of standard practices both within the US and internationally. However, I complied with the request and met with Dr. Alice Christianson who also works with transsexual issues. She agreed that it was odd for Dr. Munoz to request that as I had already been on hormone therapy for 3 years at the time and I was in what she referred to as the "later stages of transition." After that meeting, Dr. Christianson made the recommendation and Dr. Munoz agreed to meet with me. Unfortunately Dr.

Munoz was very difficult to work with, he did not follow any of the standard practices and would not listen to my prior doctors concerns regarding the treatment stating that "if [I] don't like it, that [I] should find a different doctor." When I approached the medical review board or MeritCare, they ignored my request writing that I "should work this out with your doctor." I approached Dr. Munoz one more time and he again refused laughing me out of his exam room. Because of this, I am now seeing my prior doctor again. Also, when following up with Dr.

Christianson about getting a letter or recommendation for surgery, she mentioned the dispute with Dr. Munoz and went on to continue the dispute until I advised her of my prior doctors recommendation and that I was going to continue with him as he follows the standards of the care. At this time, I still do not have the letter of recommendation but will be following up with Dr. Christianson later this year.

Also when I moved down here, again everything started out great with my current employer. I was an even higher performer and got promoted much more rapidly than normal. Unfortunately, there started to become rumors about my gender and

management approached me on them. I confirmed that they true in confidence that it would be kept confidential. I found out later that the confidentiality had been broken and several of the members of management have become increasingly critical of me. The rumors are getting even worse among the employees and the working environment is becoming increasingly hostile. Because of this, I am looking for new work but, due to the tough job market and having recently been diagnosed with cancer, have had trouble finding a new job that I am physically capable of moving to.

Katy Collins



Corporate Human Services, Inc.

1025 North 3rd Street • Bismarck, ND 58501  
Telephone: (701) 222-0977 or 800-359-3816  
Fax: (701) 222-2027  
Email: chs@chsseminars.com

29

David B. Glaspell  
*President*

Rebecca Monley PhD, LP  
*Senior Associate*

March 16, 2009

REFERENCE: SB 2278

TO: Members of the House Human Services Committee

Thank you for taking the time to review my written testimony.

My name is Dave Glaspell, I am President of Corporate Human Services, Inc. We specialize in management and supervisory training. October of 2009 will mark our 24<sup>th</sup> year in business. I am unable to attend this hearing because I am on-site with a client conducting training.

To begin, I am not opposed to extending protection to Gay and Lesbian applicants/employees in all matters relating to their employment. Currently Gay and Lesbian Employees are protected under the Federal Employment Non-Discrimination Act of 2008. This law applies to employers who employ 15 or more employees.

The Federal Law does not extend protection to individuals who are transsexual, transgendered, or who have gender identity issues. Congress chose not to include this group in the Act.

SB 2278 proposes to expand the definition of covered persons by including gender identity issues. I can assure you that based on nearly 24 years of experience working with small businesses this will place an undue hardship on small businesses who employ one or more employees. Remember, we are talking about the local coffee shop, restaurant, service station and/or dry cleaning facility (to name just a few). These small businesses typically do not have a Human Resource Department to advise them in such matters. This greatly

increases the risk of them making an honest mistake and ending up in court or attempting to settle a claim out of court, for an undisclosed sum of money which they may not have. The attached case (Attachment 1) from the State of Minnesota illustrates this point. This case went all the way to the Minnesota Supreme Court and cost West Plains a considerable sum of money to defend their decision.

I urge you to limit the scope of this law to gay and lesbian applicants/employees.

Respectfully Submitted,



David B. Glaspell  
President  
Corporate Human Services, Inc.

CC:  
Committee Clerk  
File



**Fredrikson**  
BYRON, P.A.

ATTACHMENT - 1

part 29

## Minnesota Supreme Court Issues Transgender Decision

BY: ANNE M. RADOLINSKI

April 2002

The Minnesota Supreme Court has issued a decision regarding transgender discrimination, overturning the Minnesota Court of Appeals decision discussed in a previous newsletter. (The Court of Appeals decision, if upheld, would have altered traditional notions of restroom, locker room and other facility designation based on biological gender, as well as our understanding of the parameters of transgender discrimination protections in Minnesota.) The Supreme Court's decision confirms that employers may continue to restrict restroom and locker room use based on biological gender. See *Goins v. West Group*.

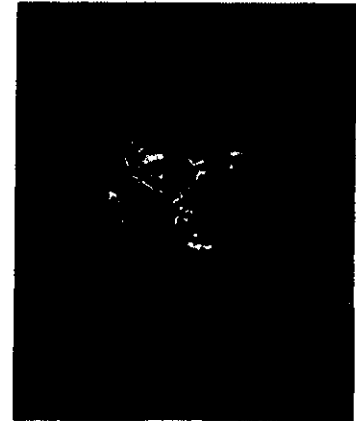
The plaintiff, originally Justin Goins, began taking female hormones in 1994 and, by the summer of 1995, consistently dressed and otherwise presented herself as female. In the fall of 1995, Goins changed her legal name to Julianne Hannah Goins, and also changed her gender on her birth certificate and driver's license. Goins ultimately did not undergo gender transformation surgery.

Goins started with West Publishing in May 1997 in New York, relocating to its Eagan facility in October 1997. Her core complaint, upon transferring to Eagan, was about restroom use. West directed that she use either the facility's two single-occupancy restrooms or that she use the men's restroom. Goins challenged West's position, and occasionally used the women's restroom in violation of the company's direction. In November 1997, West warned Goins that she would be disciplined if she continued to use the women's restroom. In January 1998, Goins was offered a promotion and transfer. She resigned, however, indicating that West had "caused [her] undue stress and hostility."

Following her resignation, Goins instituted an action for sexual orientation discrimination and hostile work environment harassment under the Minnesota Human Rights Act. The District Court granted West's motion for summary judgment, dismissing Goins' claims. The Court of Appeals reversed, reinstating the discrimination claims.

The Supreme Court, in overturning the Court of Appeals decision, determined that the sexual orientation discrimination claims failed because West restricted bathroom use based on biological gender, not sexual orientation. The Supreme Court reasoned that to decide otherwise would lead to a result not envisioned by the legislature:

"To conclude that the MHRA ["Minnesota Human Rights Act"] contemplates restrictions on an employer's ability to designate restroom facilities based on biological gender would likely restrain employer discretion in the gender designation of workplace shower and locker room facilities, a result not likely intended by the legislature."



Anne M. Radolinski  
Employment & Labor

aradolinski@fredlaw.co  
612.492.7104



The Court similarly rejected Goins' claim of sexual orientation harassment because the claim was based on employee comments regarding her use of the female restroom. West's policy regarding restroom use itself could not be viewed as discriminatory. Moreover, the comments did not rise to the level of severe or pervasive harassment necessary to sustain such a claim.

In light of the Supreme Court's decision in *Goins*, Minnesota employers may restrict the use of restrooms, locker rooms and similar facilities based on biological gender without risk of discrimination claims. Thus, a Minnesota employer may require a male employee who is contemplating or undergoing gender transformation to use the men's or unisex facilities until the surgery is completed. Employers operating outside of Minnesota should note that decisions in the transgender discrimination area are making their way through the courts in a number of states, and that the results may be dissimilar. Please do not hesitate to contact us for direction regarding transgender issues throughout the country.

Members of the House Human Services Committee:

31 FOR

On Wednesday morning, you will hear testimony on Senate Bill 2278 relating to discrimination on the basis of sexual orientation. I am asking you to support this legislation.

North Dakota state government spends lots of time and money attempting to recruit people from outside the state to fill jobs here. Passing this bill is one thing we can do to help in that effort without having to spend one more dollar. At a North Dakota Chamber of Commerce meeting a few years ago, I listened to one of the speakers, Dr. Richard Florida, tell business people that the most successful places are those that are the most diverse. That diversity includes the LGBT community.

No one should have to worry about losing their job or being denied housing simply because of who they are. As someone who believes in equal rights for all North Dakotans, I hope that you will support this bill, which will prohibit discrimination based on sexual orientation.

Discrimination is wrong, whether it's based on race, color, age, disability, sexual orientation, or any other personal characteristic, and it's time we made it clear that all North Dakotans deserve equal rights. We should all be judged on our merits, on whether we put in a hard day's work, not on our personal lives.

With your support for this bill, we can bring our state one step closer to being the fair and welcoming place that we know it can and should be.

Lyle Halvorson  
2007 Marian Drive  
Bismarck, ND 58501

32 FOR  
North Dakota House Human Services Committee,

My name is Colleen Whitaker, I am a Native North Dakotan, born in Bismarck and spent much of my growing up years on the family farm in Eastern North Dakota. I am also a concerned citizen for my home. My family and I are also directly affected by the outcome of Senate Bill 2278 before you. I request you vote Yes to pass this necessary Bill to add sexual orientation—including gender identity— as a protected class in North Dakota.

I am one of the people who have had to move from North Dakota because of discrimination. My family that is still there basically has to 'hide' and others, including my son and daughter have moved to avoid further adversity. I currently reside out of state but have a residence in North Dakota, consider ND my home, and will return one day. The reason why I participate in Human Rights in one state and live in another is because I found out first hand what happens when people find out I am transsexual in North Dakota. I can live productively and work in one place (Oregon, New York and Minnesota), making it possible for me to work for positive change in another (North Dakota) which I will always consider my home.

I would like to briefly tell you a little about my family and what happened to us in North Dakota. It is a story that is similar to many others who have left their homes there yet it is unique and is why I feel it is so important to include both Gender Identity and Sexual Orientation in this bill. And I want to convey something to you and your colleagues in Bismarck that I think is vitally important for you to hear and for all the people of North Dakota. No one should have to endure the discrimination and hatred that my family has over the past 8 years just to live in North Dakota.

First let me tell you a little about our current situation. Presently I live in a rural Eastern Oregon town about the size of Jamestown, am doing the same kind of engineering work for the same kind of firm as I worked for in ND and am well regarded here. The people here are your typical small town salt of the earth people, God fearing and looking out for your neighbor. They have welcomed me into their community and I contribute here productively as well. Before that I worked successfully in a management position for the City of New York. Unfortunately I was not allowed to make the same contributions in North Dakota.

My X has moved on to another North Dakota town, and lives with a fear that some hateful person could find out about things, make it hard and currently there are no legal protections. My daughter lives in Philadelphia, is a music teacher and performer. My son is in graduate school in Hawaii. All have endured discrimination while in North Dakota simply because they were related to me. Neither my son nor daughter wants to return to ND because of the discrimination they experienced there. Both these kids would have been a valuable asset to have in ND.

Eight years ago, my family and I (fourth and fifth generation North Dakotans) had to leave our home, were bankrupted and forced to splinter and move away from one another. Why? Because in North Dakota the company I worked for could legally fire me when they found out I was transsexual and they did. The community we lived in could legally deny us services because of this and some did. We each had to find our own way and Mindy, Lawrence and Crystal had to move and go in the closet in order to live. I read an article in the Bismarck Tribune recently; one of your colleagues stated that he didn't believe any real discrimination takes place in ND?

My employer who I was loyal to and who had recently given me promotions summarily fired me. To my face he told me flat out it was because I am transsexual, but he said that wouldn't be what he would say in print. A few people in our town and elsewhere cited religion in denouncing us because of my condition. I am a Christian and this was especially distasteful because of my personal relationship with God and my Christian upbringing. I know God is about love, not hate. Our families Café went out of business. We had to move away and I went Minnesota to secure employment and support my family the best I could. It was a hard road but I succeeded. I had no legal recourse. But I still believe in the good of mankind. As you know there are a lot very good people in North Dakota, God bless them.

So three years later I came back to North Dakota and worked with a man to start a successful business in the state. We sold to out of state vendors and did not have to rely on North Dakota interests for our income, but we brought plenty of income and jobs to North Dakota. Why did I encourage this man to do business in North Dakota? Because it is my home and I wanted to live there. But Rick found it hard if not impossible to work with the local bank and with the Empowerment Zone. We had to go into Minnesota for a lot of this. Why?

Because, according to some very candid community members, because of what I am. So I moved again, this time to New York. However, Rick and his family stayed and the business remains as a profitable enterprise in North Dakota.

It is interesting how I could live as a productive citizen and successfully perform my duties as the City of New York's DEP Risk Manager where I helped secure the water system, oversee engineers and carry out multi billion dollar projects for a city of almost 9 million. Yet in the eyes of some in my own home community of ND my contributions weren't worthy to be accepted there. Neither are the talents and contributions of a lot of other people like me, simply because they are GLBT.

I am trying to express something that strikes at the heart of this whole issue. This discrimination not only effects the person it is directed at, it spills over to family, friends and co workers and it is very detrimental to many peoples lives in this state. The importance of this bill cannot be ignored for a large group of people in ND and many that would still be living in our state if only they had adequate protections, equal protections with others in the state. I cannot make a living in North Dakota, cannot get adequate medical care and cannot secure housing in some cases because when people there find out I am transsexual I am denied these things.

Right now some perceive a prevailing attitude of discrimination as right. There is no adequate law preventing this from happening or conveying anything different. Some people say, well they deserve it, they can just change. Even if that were possible, and it is not, would that end the discrimination for my family and I? We want to live and work in a place where people treat each other with common decency, regardless of their differences. Some people say even with a bill like this, people will still find ways around it and discriminate. I have more faith in my fellow North Dakotans than that. The state needs to establish a guideline for people to look to. There needs to be an adequate law conveying that this type of discrimination is not right. And I am happy to see the large number of positive comments regarding this bill to the various newspapers around the state.

One point that you are well aware of: Oregon and New York are not loosing their populations, in fact their economies are growing substantially with an influx of new and

*part of SB*

diverse people from all walks of life. Both states have GLBT statutes in place. With the current political / societal climate in this country what it is, I know it is more important now, than ever to work for human rights on all levels. In North Dakota the challenges are similar in many respects, different in others but what is important and basic rights that are equal for all citizens remains the same.

So the importance of this bill for North Dakota as a whole, economically as well as from a standpoint of humanity is critical. No one should have to experience the negative issues that my family has. The subject of having to move from North Dakota to avoid discrimination is directly related to why I am writing this to you from out of state and not living there today. I am optimistic that we can overcome the challenges we face in North Dakota and eventually make the state even a better place to live, a place where people move to rather than away from. And a place where my family, myself and those like me can move to, contribute positively and live productively. I still have many family and friends in North Dakota and certainly would rather live back home than in Oregon or New York. I am confident that we can make a positive change with passage of SB2278. Please help pass this much needed sexual orientation and gender identity Senate Bill before you.

Thank You,  
Colleen Whitaker  
701 866 6904  
541 805 1639

Human Services Committee:

33

FOR

I support adding sexual orientation and gender identity to the list of protected classes in North Dakota. I was raised in West Fargo, Harwood and Fargo, ND and moved to Colorado in 1994 where I have resided since.

My decision to leave was based largely upon the repressive social environment, intolerance I personally experienced, discrimination, abuse and lack of opportunity I felt was available as a person of color and alternative lifestyle. I was not an open member of the LBGT community at the time and still suffered years of abuse beginning in middle school because of my PERCEIVED orientation.

By not providing protection to the LBGT community you are passively advocating this treatment and dismissing the effect that years of stress, abuse, intolerance and hatred can have upon an individual's sense of self-worth and psyche. The people affected range from the LBGT community members themselves to their families and friends but the population I am most concerned about is the coming generations.

By not advocating for a firm stance of acceptance and tolerance for all people regardless of their sexual orientation and gender identity you are sending a message to the young people of the state that this population is less worthy of respect and equal protection under the law as any other minority population. The baser side of human nature will most likely always focus on rooting out and discouraging differences. To promote an environment of harmony, acceptance and freedom all people need to feel comfortable to be themselves. LBGT people breathe the same air, enjoy the same landscape and culture and PAY THE SAME TAXES as the rest of the state's population. Promoting acceptance of all people on a statewide level would also encourage an atmosphere of tolerance that might discourage talented, creative, young people from leaving the state as I did. Most of my more creative, successful and OPENMINDED friends left within a few years of graduating high school or college also.

Thanks for considering my thoughts. Have a wonderful day and I wish you wisdom, peace and understanding while you consider your decisions.

Melanie Kuhnlein

ND House Human Services Committee,

34

FOR

My older cousin is 25. Jenelle is a very intelligent and beautiful lady. Since she was in high school she new she preferred women over men. She made the deans list every semsester while attending college in North Dakota. Right after college she left her family in North Dakota to a state where her rights would be protected.

I also have a younger cousin Tanner. Although he is only ten years old we can already tell that he prefers ladies things. He loves high heals, barbies, and only wants girls as friends. Every morning his mother wakes him up and the first thing he says is, "Mom you look beautiful today." Our family suspects that he may grow up to be gay. We all love him and want him to be protected in North Dakota.

PLEASE pass Senate Bill SB2278! Lets show our country that North Dakota is a great place to live and work for all people!

Sincerely,

Trisha McDonald

House Human Services Committee:

35

FOR

My name is Kevin Tengesdal and I am from Bismarck. I am grateful to say that I work for one of the good companies in this state. They did not have an outcry when I asked if I could bring my boyfriend to the Christmas party that first year. Also, coworkers have stood in defense when someone has questioned my being gay.

Unfortunately, so many GLBT citizens from around the state cannot say that. I am writing to be a voice for them. Their voice is silenced out of fear of losing their job or status within their community.

Consider a couple of common normal situations. The poster in the company break-room announcing the upcoming staff picnic and then, there it is. The phrase, "Bring your significant other and your family!" For the straight citizen, no problem... Bring your wife, your husband, your current lover. But for the GLBT citizen, is there really that option? Fear and anxiety grip that employee because if found out, will they lose their status within the company?

Or how about the simple question, "So, what do you do for a living?" I have chatted with folk from around the state where that simple phrase strikes a chord of fear. They travel to Bismarck to attend our dances and Pride Fest, but they will not allow themselves to be honest and state what they do for a living because they might lose their job back home.

How about the rental agent who chokes when two guys show up to see the one-bedroom house for rent? Will the agent suddenly realize that the rental was just spoken for right before they showed up?

The argument that is often heralded is "Well keep it in your bedroom, and we won't have a problem with you." Sorry, but remember how small North Dakota is, and admittedly the stereotypical fishbowl. How can we live our lives freely without the fear of losing our job or our home.

People across the state are afraid to bring their significant other to company functions. They are silenced in discussing what they do for a living for fear they'll lose their job. Do they dare bring their partner when checking out a new rental?

I encourage you to swiftly pass Senate Bill 2278 and allow it to become stated law in North Dakota that people can finally live their lives honestly without fear of losing their job, their home or their reputation. Thank you.

--Kevin R. Tengesdal

---

KRTengesdal  
900 1/2 N 2nd Street  
Bismarck, ND 58501-3534

701/527-0737 Cell



Human Services Committee,

36

FOR

I am an FTM transman (female to male transsexual) living in Bismarck, ND who has experienced discrimination first hand. I transitioned about 3 years ago when I legally changed my name and started hormones. I had no protection if my employer would've chosen to fire me at that time, but fortunately I was not fired - BUT it was very iffy for awhile, and I did lose some clients after I transitioned. Had I lost more clients, I would've lost my job, and there are no laws right now in ND that would've prevented that from happening.

I also tried to donate blood plasma at the blood plasma place in Bismarck, but I was rejected from doing so ONLY BECAUSE I AM TRANSGENDERED (and for no other reason). I also tried to get a doctor to help me get started on hormone therapy in early 2006, but there were NO endocrinologists in Bismarck who would help me. They said that they don't work with "people like me". SO I had to travel all the way to Fargo to find an endocrinologist who was compassionate enough and open-minded enough, and FAIR enough to provide me with the health care that I should've been entitled to all along as a human being with a genuine medical condition, which is gender identity dysphoria. My insurance will NOT cover anything related to or leading up to sex change, so they would not cover my psychologists sessions at first until I pushed the issue and appealed several times. They will NOT cover any of my surgery which is needed to correct my medical condition (which is a genetic anomaly which happens prior to birth), which is blatant discrimination. If I were a bio-male, they would cover my chest reconstruction surgery (gynecomastia in males), and if I were actually "female" and wanted breast reduction surgery, they would cover that also. But because I am transgendered and only because of that reason, they WILL NOT cover one penny of my chest surgery this coming fall. So I will have to pay for the whole surgery out of pocket myself, with NO help from insurance.

I know of another friend of mine (a transwoman in Bismarck) who has also experienced similar discrimination.

We are people too, with medical and human needs like everyone else, and we should have the same protections (NOT SPECIAL RIGHTS) as everyone else. Right now, with NO protections, an employer can fire us because we are transgendered, a landlord can evict us for that reason, we are denied medical treatment just for that reason, and the list goes on and on.

Just because we are a small minority does not mean that we don't exist or that our rights aren't important.

PLEASE pass an all-inclusive anti-discrimination bill which includes BOTH sexual orientation and gender identity.

Thank you,

Chris Boston  
Bismarck, ND

ND House Human Services Committee:

37 FOR

I look forward to the day that I don't have to listen to people make derogatory public comments regarding a person's sexual orientation. I find it depressing that I still do. Nothing makes me want to leave my home state more. Nothing makes me less proud and less likely to identify myself as from here.

Marci Goldade

38

FOR

To whom it may concern:

I am friends with a guy who is openly homosexual. In high school (Williston) he was not allowed to bring a same-sex date to prom. There is an established rule that same-sex couples cannot attend formal functions. He chose not to fight this because it would have brought a personal vendetta and bias against him and his family within the community and school system. This type of intolerance disgusts me. SB 2278 is not "a solution looking for a problem"; it is a solution to a problem of which many are either unaware or purposefully apathetic.

Brittany Palmer

39

FOR

Human Services Committee:

Though I do not personally know of anyone who has been discriminated against due to gender identity or sexual orientation, I do know many who have suffered psychological trauma due to feeling unsafe disclosing their gender identity or sexual orientation in North Dakota. I am currently a graduate student in a clinical psychology program and have worked extensively with those who have had to go through a "coming out" process and have worked through traumas involved in this process. I believe this initiative is a step toward allowing individual to be who they are without fear of retribution. This act alone obviously is not sufficient and it will take work get issues surrounding sexual orientation and gender identity into the social conscious; and then more work to help others become aware of the grave dangers those who are discriminated against endure from intolerance. Please consider this bill as a stepping stone toward the equal treatment and consideration deserved by all.

Ryan Kerzman

40

3-18-09  
Support For  
HB 2278

Chairman Weiss and members of the Human Service Committee:

My husband, Gerry, whose a physician in Bismarck, and I have a 27 yr. old gay son, Mitchell. Mitchell is currently a medical student at Stanford University. He came out to us 8 yrs. ago. He was the same wonderful son that we loved after he told us as he was the minute before. Mitchell has changed our lives forever in many ways that Gerry & I are so blessed to have had this special opportunity. In these 8 years, we have educated ourselves in gay issues that before we probably wouldn't have thought about. Bill 2278 is purely about treating each human

being with the fairness, respect and dignity you would want for yourself. The Golden Rule. It is not Republican or Democrat, it is the right thing to do. It is time for society to move forward and be courageous by speaking up for our oppressed gay, lesbian, bisexual and transgender citizens and make North Dakota a safer and fair place to live and work.

Please, allow us to leave you with one question. When you hear non-supportive comments from your constituents, are they being fair to gay, lesbians, bisexuals, and transgender persons?

We respectfully ask your support on HB 2378.

Karen? Merry Lynn  
Bismarck

Amendment to SB 2278

Page 3, delete line 20-22.

Page 4, line 30, delete "actual or perceived"

Page 4, line 31, delete "gender identity" and insert "transgender".

Page 5, line 5, insert "transgender means identification with a gender different than that assigned at birth."

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2278

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 14-02.4 of the North Dakota Century Code, relating to religious exemptions to discriminatory practices; and"

Page 5, remove lines 27 through 31

Page 6, remove lines 1 through 8

Page 9, after line 24, insert:

**"SECTION 12.** A new section to chapter 14-02.4 of the North Dakota Century Code is created and enacted as follows:

**Religious exemptions.** Nothing in this chapter pertaining to religious discrimination or sexual orientation shall apply to a religious association, corporation, society, or educational institution, if the educational institution is operated, supervised, or controlled by a religious association, corporation, or society, or if its curriculum is directed toward the propagation of a particular religion."

Renumber accordingly