

2015 SENATE JUDICIARY

SB 2279

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2279
2/2/2015
22983 & 23009

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21

Recording #22983.

Ch. Hogue: We will open the hearing on SB 2279.

Sen. C. Nelson: Sponsor, support (see attached #1). I also have a copy of Tom Fiebiger's testimony (he was not present).

Ch. Hogue: Thank you. Further testimony in support of SB 2279.

Rep. Joshua Boschee: Sponsor, support (see attached #2).

Ch. Hogue: You indicated that the Dept of Labor doesn't have any data on number of complaints. Is there an authoritative source that would tell us how many gay and lesbian citizens we have in ND?

Rep. Joshua Boschee: The most accurate results that we could pull from was the 2010 census. Fewer than 3% of those identified as lg.

Ch. Hogue: Three percent of what number.

Rep. Joshua Boschee: Of the overall state population that are self-identified. There are a number of people who don't report that data accurately.

Sen. Luick: Can you give me an example of what you were seeing or is the discrimination.

Rep. Joshua Boschee: I referred to two different instances in my testimony. Two years ago I know a college student at NDSU, who was active in student leadership and one of those organizations was the gay/straight alliance; which

is a good group at NDSU. When the employer found out that he was actually part of a gay/straight alliance, they just fired him based on that. The student was fired for that reason. He had no recourse. Since there isn't recourse with the Dept. of Labor, because it isn't in code currently. The second example was, in visiting with a physician at Essentia Health in Fargo, he was recruiting nurse practitioners and one of the nurse practitioner is a lesbian woman who was moving to Fargo with her partner. In one instance they were looking for a rental, once the landlord found out that she had a same sex partner that would be living with her, the option to rent was no longer available. Those are anecdotal stories and because those individuals couldn't go to the Dept of Labor, we aren't able to verify the accuracy of that, if it was discriminatory or not.

Ch. Hogue: Thank you. Further testimony in support.

Rep. Kylie Oversen: Support.

Ch. Hogue: Thank you. Further testimony in support.

Peg Haug, citizen: Support. I was an employee of the Dept of Labor in 2013. I worked there for four years and I fielded thousands of phone calls. At an EEOC meeting prior to that date, they said that the federal government was going to look at sexual orientation under the protected category of sex. She was from Williston and working for a business with 11 employees. She was not eligible under the federal law because they have to have 15 employees. I couldn't help her.

Ch. Hogue: Rep. Boschee says that the Dept doesn't track complaints from g or I complainants. Can you give us any idea how many complaints that the dept. received, even though you don't officially track them.

Peg Haug: I didn't have access to that. I left the Dept. of 2013. The Labor Commissioner is here, he might have more information.

Ch. Hogue: Thank you. Further testimony in support.

Jared Kellerman, citizen: Support (see attached #3).

Ch. Hogue: You mentioned teaching Sunday School at your Lutheran church. This bill would allow your church to prevent you from teaching because of your sexual orientation. Do you support that?

Jared Kellerman: As an individual, no. I believe everyone has a right to their own beliefs; my personal belief is that someone else's impinge on or impede my own rights to live my life the way I want.

Ch. Hogue: If your local church said, we're exempted under this bill, and we don't want you teaching our young children, you'd be okay with that.

Jared Kellerman: You can't win everything. I support this bill, but I may not agree with that part of the bill that exempts religious organizations. I respect people's rights to have their own rights, I guess.

Ch. Hogue: Was that an issue in your situation or did you not identify yourself as gay.

Jared Kellerman: I wasn't able to identify myself. I lived in an environment of silence; there wasn't any conversation about it and when it was talked about it was in a Biblical sense of sin.

Ch. Hogue: Thank you. Further testimony in support.

Jeff Hoverson, citizen: I am against this bill, for two reasons that have already been given on the supportive side. One is the whole issue of love and bullying. It is unfortunate but it doesn't have anything to do with this bill. I am against bullying. That's a personal issue. Another thing that is very offensive to me is that when it get framed in a context of being the same as Native Americans and the rights that they fought for. I oppose it for those two reasons. I have friends that have chosen the gay lifestyle. I don't bully them but I have expressed my view in those circles and I've been bullied. It goes both ways. I don't think this is a bill about bullying and when it's made about bullying, the problem is in the script that is being written. We have two women who have chosen the homosexual lifestyle that come to our church and sit in the front row and every time they come we give each other a big hug and there is a lot of love between us. There isn't bullying. A lot of North Dakotans don't feel comfortable that's how it is being presented that we need to have this law because of the bullying; as if it's going to do anything about that issue. The other concern that was expressed is regarding the business of attraction. "Are we going to codify that into law" just because I have an attraction for another man doesn't mean that I have to identify myself as homosexual any more than if I have an attraction for more women than just my wife. Does that

mean that I should identify myself as an adulterer and that I should fight for rights; I have the right to have three wives, that every business and every rental should accept that and hire me or let me live in their rental facility because I have my rights. I think once we go there we are stepping away from what makes, not only this state but our country exceptional is that all of these people do have their rights already, just like I do. You have the right to be married in the same way I can't marry my sister, neither can you, we have equal rights. We have the right to get married in the same way. Once we start to legislate, we start to step away from what makes America and North Dakota exceptional and that is this; private property is sacred. Your rights stop at my driveway. You don't have the right to cross the boundary. Your rights stop at, whether it's my business or my facility, whatever is mine, we respect that and what's yours is yours. I think North Dakota has already done a good job of doing that already. A lot of North Dakotans are not buying these arguments that we have to raise this to the level of gender and race just because someone has an attraction. If they want to identify themselves as homosexuals, they have to live with their attractions. I have to live with the circumstances where I have to say "no". I have an attraction to chocolate; it's quite unhealthy for me, but I have to live with it. I can't tell everyone else that they have to accept that. I cannot cross their boundaries.

Sen. Grabinger: You mentioned that you have friends, and you talk about bullying; my understanding of this law would address this. If you, as a property owner or an employer and one of your employees is homosexual, do you think that that's not bullying if you fire them because you found out that they were homosexual or that you're not going to rent an apartment because you found out that they have a partner.

Jeff Hoverson: That's what I was getting at when I said "would it be any different if I had three wives" or I love my cat or dog. That might be an extreme example but it's making a point that I wouldn't consider that bullying. In this country, we hold our private property as sacred. I may disagree with your reasoning for why you were discriminating against me, but that's your right and I have the right too. I think what is actually going to happen is that it is going to backfire. Sooner or later there's going to be someone who has gotten their right to cross your boundary and all of a sudden someone else is going to want to cross their boundary. They are going to say I don't want you to live in my basement if you have three wives or if you're this or that. It cuts both ways.

Ch. Hogue: Thank you. Further testimony.

Ken Connelly, Legal Counsel, Alliance Defending Freedom: Opposed (see attached 4A). We litigate religious liberty cases throughout the country.

Sen. Casper: Can you elaborate on your experience with regard to the litigation that takes place and what goes into proving the case. I am more concerned about the law and the litigation.

Ken Connelly: These should be easy cases. The first amendment protects free exercise, that's more than free belief. These laws place the religious business owner in the dock first. Then the religious business owner then almost has to plead the first amendment as a defense. It unnecessarily drags the religious business owner into court, when the default position, under the US Constitution and the supremacy clause should be that the religious business owner never has to do anything that his conscience won't permit. He never has to speak a message that he doesn't want to speak, and that's been borne out in cases like the NH license plate case, the Pledge of Allegiance case, the Boston homosexual St. Patrick's Day parade case. All of those things happened. In these cases, you have the business owner who doesn't agree with the message that someone else wants them to propound; they get dragged into court and generally it lasts quite a long time in our experience.

Sen. Casper: I'm thinking more outside the realm of the question of religious, or free speech in the first amendment. I am thinking more about the practical application of the company working here in ND that has 20 employees, and for whatever reason they are downsizing. They fire five employees, two employees fall under this legislation after it is enacted and what happens with the litigation moving forward when the onus is put on the business owner to defend their decision that it wasn't based on homosexual discrimination found under SB 2279, but for another reason, do you have any experience with that.

Ken Connelly: Yes. I think you are speaking more logistically how it happens. It can vary depending on the jurisdiction.

Sen. Casper: I'm asking how you can prove a mindset.

Ken Connelly: It's very difficult to do that. You will probably hear this from some business owners who have taken the time to read this bill. Perceived sexual orientation and perceived sexual gender identity; it's unclear to me in the bill whether that means the perception of the person claiming the gender identity or the sexual orientation or the perception of the business owner, the

housing facility provider or the employer. To answer your question, it's essentially impossible. In my opinion, it's not only impossibly vague, it's unconstitutionally vague. If a person were to present as bisexual and the employer did not know that and he's called before a human rights commission and/or district court, and they said he discriminated against this person because he's homosexual. If that employer doesn't know the person's perceived identity, how is he to handle that, he is in the dock, but can't answer the question. It is an impossible task to defend. Practically all he can do is plead the first amendment, which he shouldn't have to plead in the first place; he should never be in court in the first place.

Sen. Casper: You mentioned that the Catholic Charities and the Knights of Columbus. Can you elaborate why you don't see those falling under the exemption in this bill? I thought that they would.

Ken Connelly: As I read the exemptions, the major exemptions in this bill, as a general principle - religious exercise shouldn't need exemptions in this country; so we are already starting from a position of a flaw in the bill. Specifically, those exemptions are placed in the employment context. So what they do, they say that a religious organization can, for religious positions and non-religious positions prefer someone of the same religion or someone who shares the same tenets of the religion. Then there is a clause, which I'm not sure why it is in the employment section, but it says that you can prefer people or restrict the employment to people who share your faith or people of the same religion in houses of worship and/or parochially schools. When it comes to public accommodations, for instance if Catholic Charities takes funds from the State of North Dakota to place needy children into homes (foster care) that's been viewed in places like Illinois, MA and Washington DC to say we're not going to give you that money unless you agree to place children with same sex couples. That means that they are being viewed as a public accommodation. There is no exemption for that as far as I can see in the bill. The Knights of Columbus, for instance, if they have a facility that they generally rent out for a small fee or a gratuity as a fundraising activity, they then give to needy families, if they happen to rent that facility for weddings and maybe that's one of their significant collections for a week or month. They can be brought up under a public accommodations statute because they invite the public in; they take a gratuity or fee or charge a fee. If the same sex couple comes in and says that they would like to rent this pavilion for our wedding. If they say no, they'd be hooked by this statute, as far as I can tell. I don't there is anything that would bar that.

Sen. Casper: You mentioned an anti-discrimination training, diversity training, so where you have seen that happening, I'm thinking of things that you brought up that I don't see in the bill. Are those things that are getting put in place by the beaurocracy once the legislation has passed? Can you elaborate a bit more on that issue, is there some place in the country where someone was being prosecuted and the penalty was that they had to go to "change your mind-set training".

Ken Connelly: Generally, you aren't going to see these - one of the more pernicious effects of these bills, is that when you see the relief section of these bills, they are fairly open-ended. In other words, in this bill, equitable relief is one of the permitted remedies. Generally, we're not going to see anything that says diversity training right out front in the statute itself; but say in the case of the CO baker, they've been ordered to diversity training as part of the relief. We obviously object to that and we think it is unconstitutional under the first amendment. This is not a totalitarian state. You cannot be reeducated here; if the first amendment means anything, it means that. Generally the movement is towards getting that business owner to believe what he doesn't want to believe. That's the whole thrust of these laws. That's what we see all around the country. Everywhere that passed, that's what happens.

Ch. Hogue: Please submit your written testimony. Tell us, you referred to these individuals as your clients. Are they personally your clients or are you employed by an advocacy organization that represents the clients.

Ken Connelly: Alliance Defending Freedom is the organization. For instance, one of the cases is my personal client, but we have teams that work on the cases. I would be happy to get you a written legal analysis. I didn't have a chance to copy my testimony and spent 14 hours in the airport system in Phoenix; you can't be too careful with that Phoenix winter weather.

Sen. Grabinger: You mentioned the Knights of Columbus. I am a member of that organization. I understand that there are 23 states that have adopted a bill very similar to this. My question is have you seen where that has ever happened, that the KC's have been in that position where it has caused a problem because there is a same sex wedding reception. Knowing from my KC's in Jamestown, I can't imagine that they would question a wedding reception, whether or not. Has that happened or is it just a hypothetical.

Ken Connelly: With respect to the Knights of Columbus, I give that example because most people would know it. It's a fairly common quasi-religious entity

under the auspices of the Catholic Church. I don't have an example for the Knights of Columbus. I don't think there is any doubt that this bill, if somebody were to bring a case against the Knights of Columbus, this bill would permit them to drag them into court. We do have a past client, called Ocean Grove Community Association, which was a Methodist association that pledged essentially fealty or allegiance to the Methodist Church. They owned a wedding pavilion in Ocean Grove, NJ and when a homosexual woman approached them to use the pavilion; they declined based on their Methodist safe, which is in the Book of Common Prayer that marriage is between a man and a woman exclusively. They were brought up under the NJ law against discrimination. They threatened to take away their tax exemption and they were forced to be out of the business of renting that wedding pavilion. It is an analogous situation.

Ch. Hogue: Thank you. Further testimony.

Caleb Wiechmann, citizen: I am opposed to this bill. I think there are two issues; a freedom issue and a moral issue that are somewhat intertwined. The freedom issue has been addressed quite well already that in this country a person should be able to do what he or she wants with his own property, especially with regard to religious beliefs. The bill gives exemptions to religious entities, but doesn't for individuals, even though those individuals, might have strongly held religious beliefs; this could put them in a very difficult situation. As to the moral side of it, of course, this type of activity as we all know has traditionally been considered sinful. Sen. C. Nelson brought up the point that Jesus loves all the children and that is, of course, absolutely true. He came here to help us with our problems. Our main problem was sin and he dealt with that by sacrificing himself for us and He loves us all but he doesn't love our sin and he expects us to forsake it. Certainly we all have sinful tendencies of one kind or another. Those sinful tendencies should not be encouraged by forcing other people to accept against their will whatever my sinful tendencies might be.

Ch. Hogue: Thank you. Further testimony in support.

Derek LaBrie, Government Affairs Commissioner at UND: Support (see attached #4).

Ch. Hogue: Thank you.

Kevin Tengesdal, homosexual: Support (see attached #5).

Ch. Hogue: Thank you. Further testimony in support.

Joan Glaser, citizen: Support (see attached #6).

Ch. Hogue: Thank you. Further testimony in support.

Nancy Willis, Government Affairs Director for the ND Assoc. of Realtors:
Support (see attached 7).

Sen. Grabinger: I understand from your testimony, you say that it is already covered under federal and state Fair Housing Laws. Does it apply to ND?

Nancy Willis: No, not in ND yet; that is what we are saying it should be echo federal law.

Sen. Grabinger: How many states do have this?

Nancy Willis: I don't know.

Sen. C. Nelson: You're with Realtors which sell real estate.

Nancy Willis: Yes.

Sen. C. Nelson: Do you know what the position is on the part of the apartment owners or are some of them part of your organization.

Nancy Willis: No, the Apartment Association has its own organization that represents apartment owners.

Ch. Hogue: Thank you. Further testimony in support.

Tim Johnson, Pastor: Support (see attached #8).

Ch. Hogue: Thank you. Further testimony in support.

Suzie Bartosh, homosexual: Support (see attached #9).

Ch. Hogue: Thank you. We will recess the hearing.

Recording #22983 ended. The hearing on SB 2279 continued in the afternoon of 2/2/15. Recording #23009.

Ch. Hogue: We will come back to order and resume testimony in support of SB 2279.

Wayne Kutzer, citizen: Support (see attached #10).

Ch. Hogue: Thank you. Further testimony in support.

Tom Ricker, President of ND AFL-CIO: Support (see attached #11).

Ch. Hogue: Do the collective bargaining agreements that your organization negotiates, do they ever having to advocate for equal treatment for homosexuals.

Tom Ricker: I've seen contracts that have language included and I've also seen contracts that don't. At least those workers have an advocate. They have a union representative they can go to if they feel that they've been wrong or discriminated against.

Ch. Hogue: In the contracts where they don't, do you specifically advocate for that.

Tom Ricker: We advocate for no discrimination of any type in the work place, whether it's a protected class or not.

Ch. Hogue: Do you advocate for those types of provisions or is it not an issue.

Tom Ricker: Generally not an issue.

Ch. Hogue: Thank you. Further testimony in support.

Aaron Weber, NDSU Student Government: Support (see attached #12).

Sen. Casper: Was this part of a meeting at NDSU's student government.

Aaron Weber: Yes.

Sen. Casper: Was that a highly attended meeting, was there good attendance there in support from University and to what extent in your experience, as a student leader here, are you seeing this take place on the ground in Fargo, that this law would ramify for those students are recent graduates.

Aaron Weber: This was first read at NDSU Student Senate. It needs a second reading, but we did a preliminary poll that indicated that the resolution would be passed based on that vote. There were 34 student senators at NDSU and there are five open spots now, but otherwise the survey was completed by all of them. As far as evidence or data that would suggest that this is a problem at NDSU, we don't have any hard data. Typically students don't think of student government as the first place to come and report that this behavior is happening.

Sen. Grabinger: Do you when the NDSU adopted this policy.

Aaron Weber: I believe it was 2011, following the State Board of Higher Education adopting the same policy.

Ch. Hogue: Thank you. Further testimony in support.

T.J. Jerke, ND Human Rights Coalition: Support (see attached #13a,b and c).

Sen. Casper: Who else, besides the homosexual community, does the Human Rights Coalition represent?

T.J. Jerke: We're broad based, of course. We are a growing organization but our focus is on human trafficking legislation, as well as the pay equity issues, minimum wage issues. We just want to make sure that individuals in ND are given their full human rights. It's a broad based mission and vision of the organization.

Sen. Casper: Sure. Is it the position of the Human Rights Coalition that you are saying that it's not a special privilege to have access to earned income that essentially a job is a human right.

T.J. Jerke: Access to an earned income is going to read that this is a basic human right that should be afforded to all people.

Ch. Hogue: Thank you. Further testimony in support.

Stuart Savelkoul, Asst. Exec. Director of ND United: Support. ND United represents over 11,000 members across the state of ND including folks in K-12 schools, state government and also higher education as has been mentioned several times today. The NDUS affords protections very similar to those proposed by SB 2279 to its employees; state government does not and not necessarily every school district in the state.

Sen. Casper: Do you know of anybody who is an employee of the state government or employee of a school district that was fired for being homosexual.

Stuart Savelkoul: I do not. That doesn't mean that it hasn't happened. It doesn't mean that they chose to leave their job before such an occasion occurred. Like Mr. Ricker mentioned earlier, in state government, many employees are not what would be traditionally be considered "at will employment". Of course, those in non-classified positions are a little more at will. For a lot of the employees that are in classified service, there is still a progressive discipline process in place that would usually need to be observed before a dismissal could take place.

Sen. Casper: Regardless of someone's sexual orientation in the jobs you are talking about, there's a contractual right outside of whatever would happen with this legislation that those people are afforded.

Stuart Savelkoul: For a lot of our members, yes. There are employees of state government or school districts that are "at will" employees, for which such protections would go a long way.

Ch. Hogue: Thank you. Further testimony in support.

Chris Linblad, citizen: Support. I am concerned about civil rights issues. I believe that all citizens, regardless of their race, religion, gender, sexual orientation should be treated the same and they should be afforded the same protections. Fifty years ago, the US Congress passed the Civil Rights Act at that time. It might not have been supported by the majority of the public, but those leaders did the right thing when they provided protections to those citizens who had not been part of the favored majority. I would point out that under the first amendment, the government shall establish no official religion and as such it is not appropriate to legislate based on one's religious views. Essentially it is my opinion that the book of Leviticus should not be dictating public policy. If so, divorce, tattoos, pork, shellfish would all be illegal. That's

not the case. I believe that this is an important opportunity for you as leaders of our state to do the right thing and to pass protections for those citizens that are homosexuals. I believe that the opponent's arguments do highlight that this is indeed a problem because there are a lot of people, apparently willing to fight for their right to discriminate against somebody based on their own religious beliefs.

Sen. Casper: You're all right with codifying someone's thought as long as it agrees with yours.

Chris Linblad: No, I'm saying that, in my view, one's religious views should not dictate public policy; essentially this country was founded on freedom and equality. We should be treating everyone equally and I believe that the homosexual community does face discrimination and that this bill would provide the state an opportunity to help provide protections for those folks.

Ch. Hogue: Thank you. Further testimony in support.

Jennifer Cook, Policy Director for American Civil Liberties Union of ND: Support (see 14 a and b).

Sen. Luick: On the second page of your testimony, you had indicated results from a 2011 UCLA survey. Do you have any numbers for ND on that kind of survey?

Jennifer Cook: I don't have any.

Sen. Luick: Are the issues getting worse, getting better or staying the same. Obviously there is more focus in the news today than there has been in years past. I'm wondering if the numbers are changing or where we are heading "as is" today.

Jennifer Cook: Are you referencing numbers across the United States in general, or in ND.

Sen. Luick: Just in ND, I don't have much control over what happens on the other side of the borders.

Jennifer Cook: I don't have any numbers from the state pertaining specifically to ND; I couldn't say what the numbers are, if they are getting better or not.

Sen. Casper: You said you were a law clerk. You drafted a number of summary judgment opinions in your day. In a court of law, how would you prove that someone got fired or removed from an apartment, or the apt. wasn't rented to them because of their sexual orientation?

Jennifer Cook: I dealt with varied cases. Primarily I was focused on civil law. In the first case I ever assisted the judge in drafting was an age discrimination claim brought under both the federal law and the ND Human Rights Act. In fact, I am familiar with a case called *Sprat v. MDU*. It is the go-to case when you look at law in this area. The employees have the burden initially, whether you are an employee or a renter. When you file a complaint in court, whether it's federal or state court, the plaintiff has the initial burden to prima fascia case. Then the burden switches once they met the elements of that case to the employer, let's say for purposes of discussion. The employer then has the opportunity to show that there was a legitimate business reason for that employee's discharge. Once that happens, the case is resolved. If the business can come back and show there was a legitimate reason besides the fact that the employee was a member of the protected class, then the case goes away.

Sen. Casper: So what would be prima fascia case for the plaintiff here?

Jennifer Cook: For example, if you wanted to model it after the age discrimination case, in *Sprat v. MDU*, where most cases you will see indirect evidence, there isn't a proverbial smoking gun that plaintiffs usually have because they are either an employee and don't have access to the records of the business or the employer has, usually most cases are brought on indirect evidence and there is a modified McDonnell Douglass test in this state. So to prove a prima fascia case, the plaintiff first has to show that they a member of the protected class, that there was an adverse employment decision (firing) and that they were unfairly treated as opposed to anyone else in that class. Then the burden shifts to the employer to show that there was at least one legitimate business reason for that firing that had nothing to do with the individual's class or membership in that class.

Ch. Hogue: Going back to the UCLA study, not wanting you to kill a tree, but is that study available on-line.

Jennifer Cook: I can definitely give you a link to that study. I did not provide it with my testimony, but there is an interesting report by the US Government Accountability Office that was reported on July 31, 2013 and the Office

surveyed the 22 states that currently have statutes that protect either sexual orientation and gender identity, both or just sexual orientation. They surveyed each of those states and the states reported back and they had numbers on how many cases the employment discrimination and particularly in relation to sexual orientation or gender identity that they have received over a certain time period, from 2009. It specifically references the fact that someone before who had testified before, said this would open the flood gates of litigation. You can't have it both ways. Is discrimination against sexual orientation generating a problem and if not, then there wouldn't be a flood gate of litigation and in fact in Minnesota, they have only encountered about 20 claims filed from 2009 to when the survey was published. It's a helpful study to show what is really going on out there.

Sen. Casper: Is the ACLU currently getting complaints right now or a list of people that felt that their civil rights are being violated and tracking that.

Jennifer Cook: There are two main arms to the ACLU in general and the ACLU in ND we have the advocacy portion which is what you are seeing here, and we also have the litigation arm and we've certainly received complaints. I just started in December, I haven't seen any cases personally, however, our executive director, of both ND and SD, that represented a client who worked for an employer in SD and it was based on discrimination for his sexual orientation.

Sen. Casper: When you were in the National Guard for those 8 years, do you know of anybody who was removed from the National Guard for any reason because of their sexual orientation.

Jennifer Cook: Yes I do have a personal experience with that.

Ch. Hogue: You referenced a Sprat v. MDU case; I thought you said that involved assertion of claims under the federal discrimination statute and our ND Human Rights Act is that correct.

Jennifer Cook: I believe that it was solely on the ND Human Rights Act.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition.

Tom Freier, Executive Director, ND Family Alliance: Opposed (see attached 15). I will pass out testimony from Focus on the Family (see attached 16).

Sen. Casper: You say that everyone should be treated with dignity and respect in the workplace, both employers and employees. If we don't pass this law, someone could be fired in the state of ND simply because they are homosexual.

Tom Freier: I think the marketplace and the people of ND are handling that issue very well, we believe. I think that we fine in ND, as we look at all the entities that we see here today have proven and given a general awareness to the issue of treating others with dignity and respect. We see that is working. I think we can continue to see that, to prove over the next years that that will affect. I don't think the answer to trying to prevent someone from being fired is having the owner being forced to protect that person's ability to work. When you take away someone's rights, someone else has to give those rights. Individuals in this case, if we're protecting a class, then the owner of the business is the one that is going to have to give up their rights.

Sen. C. Nelson: I've had several people question if Mr. Connelly is a registered lobbyist.

Tom Freier: No, he isn't.

Sen. C. Nelson: You just said on page 2 of your testimony that first amendment rights of men and women of faith don't cease after they leave the church building. The law in various places says that you shall not discriminate the status with respect to participation in lawful activities off the employer's premises during non-working hours; which do not directly conflict with the essential business related interests of the employer. In my testimony this morning, I mentioned that there are a number of large stores that do business in ND, that have very good anti-discrimination policies. The problem with some of those people is not in the workplace. The problem is in health care, in some of the soft benefits - such as do we provide healthcare benefits for the partners or the family. Do we have a problem with, for instance, my granddaughter and her best friend asking for an apt. and are they judged as homosexuals or are they judged as college students, who is going to make that determination. I don't see much difference in your people of faith rights and the homosexual's rights. Why should there be a difference.

Tom Freier: I think you make a good case. I think today we have that. I think we have the opportunity for men and women of faith, when they leave the church to exercise their rights that we find in the first amendment to the

constitution to express their faith through carrying out what they do at their workplace. I think that same thing can be afforded to those you've just referenced. We have that today. You referenced the people that are working on this issue, I know that there is a homosexual chamber of commerce and all the other entities that are here today and I think that's really why in ND today we have the diversity and the robustness of an economy. I don't believe that there is an inability of people in ND to find jobs without regard to their sexual orientation. I think that is working very well in ND.

Sen. C. Nelson: In 2002, when there were 13 businesses that basically had good policies and now there are 366. It shows that there has been a change of attitude in the last 10-15 years. I think there is going to continue to be that change of attitude. You and I are from a different generation. You heard the young people today they don't have the same message that I am hearing.

Ch. Hogue: Thank you. Further testimony in opposition.

Clint Fleckenstein, citizen, photographer: Opposed. This bill is presented in the name of equality but it is actually legalized bullying. You've heard emotional testimony, anecdotes; Scripture twisted out of context, although no one quoted from the Koran, for instance. They go after the Christians but the Christians aren't the only people of faith who have an opinion on homosexuality. We've heard no testimony based on hard data related to discrimination. This particular type of legislation using the exact same kind of language has an established and well-documented track record, which has been used to harass, intimidate, and destroy small businesses; people who are photographers, cake baking or even a second job. Those are the people discriminated against by bullying and using this as a bludgeoning tool to harass. As a Christian photographer, if somebody came to me and asked if I would take an artistic nude photo, I'd say that's against my beliefs; but I can recommend someone to do that for you. If they want to do pornography, obviously the same answer. If they wanted to do some alternative sexuality type behavior, homosexual ceremony, same answer. I would tell them that I'm not their guy. The problem is that this bill would allow them to use the force of law to then compel me to do this against my beliefs. While I don't have to go ahead and provide you with a list, the ADF fellow is going providing that. I found those very same cases of the great-grandmother who's going to lose her house in Washington. The print shop guy, the baker, etc. All of those have happened since last session, when this very same bill came before you. Here is the scenario: a person or persons belonging to this protected class, encounter a small business, this person doesn't decline to serve them. In the

case of the great-grandmother, this was a friend who she hugged at the deposition but as soon as she said, well I can't do this particular service, which they declined because of their faith. Now, rather than find someone else, this aggrieved person gets all lawyered up and back they come, and they are going to punish this person using the legal system. It's a one-way street by the way. In 2012, homosexual marriage was all the talk in the legislature in NM and Gov. Martinez's hairdresser, dropped her because of her views on homosexual marriage. That's not discrimination. Two months ago, Theodore Shubat called 13 bakeries that were identified as homosexual owned or homosexual supported. He asked them to make a cake with the frosting message that said "gay marriage is wrong". All 13 of them refused because they couldn't do something they didn't believe in. In addition, a cookie company said they would, but they were going to draw male genitalia on it too. That is basically their idea of equality. They aren't interested in equality, they want others to embrace their lifestyle choice and punish those who don't. They paint a picture of some huge, sinister entity persecuting them because of their sexuality. Sen. C. Nelson and Rep. Boschee, and other have testified that an ever-increasing number of companies have taken it upon themselves, for their own policies, where this sort of matter belongs to go ahead and make these accommodations. They've got all the large corporations out there, the Fortune 500 and things like that. They've got media outlets that produce programming favorable to them and identifying people who disagree with them as homophobes or haters. By the way, I'm not afraid of homosexuals. I don't hate homosexuals. I'm afraid of their advocacy groups, their activists that pack the room, they've got public relations firms, legal foundations, financial resources, and they've got the ACLU all pushing their agenda and ready to punish me for simply the act of disagreeing with them. Even more alarming is what I found out in researching the case of the great-grandmother with the flower shop is now that this sort of legislation has passed, the Human Rights Commission or whoever it is that handles the complaints on this, has now declared that, regardless of how her corporation or her company is set up, that now they can go after her personal assets because "she doesn't have her mind right". It's amazing; they want to send people to sensitivity training. They are taking private citizens, going after their private assets, and going after their private thoughts and beliefs inside their head. It's unbelievable. Now all citizens have a first amendment right to the free exercise of their religion. The sexual activists want to keep people of faith inside the church or within your home. I found a court case, Puroota vs. San Diego; this was in the 9th circuit court, no bastion of wild-eyed right wingism, they ruled that second amendment rights are not limited to a person's home or private property, that once you give someone a right, it is what they call portable. How can this right

be any different that it's not portable? I do know that vague law is bad law. We start off with public accommodation that can mean anything, that can mean a multi-billion dollar corporation or a lemonade stand. The same with actual or perceived. Who is perceiving, who is determining actions. Once you get the sexual orientation in the door, it opens it up. I was looking to see what the activists for homosexual issues and other sexuality issues say and I found that the current acronym is actually lgbtqqaap. This acronym is already twice as long as it was the last time you heard this bill. The problem is, if you pass this law saying sexual orientation, you have opened door and said come on in. All the other acronyms now are welcome. Pandora's box has been opened. Vague law is bad law. Even the President of the US, two weeks ago, he did this famous YouTube interview with this person, Glozal Green and he corrected identified alternative sexuality as a lifestyle choice. If you pass SB 2279, you're going to put the entire legislative body on a slippery slope. What happens next biennium, two years from now, you find yourselves in this room and now it's all the people who say that they are being discriminated because they have tattoos, or some other sort of behavior. Once you grant protected status to a lifestyle choice or behavior, you can't go back. Is that really the position that this legislature wants to be in. One other thing, I've heard that some people want to consider this economic or workforce development bill, as they hope it will attract others to ND. I would like to say that I think that giving a tool to activists, who can be used to sue ND businesses or private citizens, is a horrible means of economic development. I urge a Do Not Pass.

Sen. Luick: You are closer to the younger ages than I am. I'm wondering how and why is it that there seems to be a precedence as to why we want to get it well-known of our sexual orientation. Why is that in the public eye, more so now than ever before? I wouldn't go down the street holding a sign saying I'm heterosexual or I'm homosexual myself because maybe I am a little older, why is it so important that we're even discussing this if we don't have these problems.

Clint Fleckenstein: I don't know that I can really speak to that in that regard. I do know that I live my life according to my faith. I vote that way, I spend my money that way, I do everything that way. When it comes to these sorts of sexual issues, that's not really within my sphere. I just believe what the Bible says and I don't need to convince you what the Bible says. The law says all that matters is that people like me simply believe it. In my testimony, I said that the major media, I used to be in broadcasting, has been putting out programming, kind of pushing this agenda, perhaps that's why all of a sudden that it's coming to the forefront. I, for one, was astonished given what you

would see on TV and how things are implied that the CDC says that less than 3% of the population falls into this age group. Yet, two weeks ago, I had the TV on in my office and KFVR was on and the Today Show, in the middle of a news program and suddenly there is a promo for Days for Our Lives with two men passionately making out, one of whom was married to another man. Maybe the media has something to do with the awareness or the fact that it's in the public venue.

Ch. Hogue: Thank you. Further testimony in opposition. Neutral testimony.

Troy Seibel, Commissioner, Dept. of Labor: Neutral (see attached 17). I would like to provide the committee with a little bit of background about how our office currently handles any complaints of discrimination where the basis is sexual orientation or gender identity. One of our former employees this morning testified fairly accurately on that point. Generally speaking now, if we get a call from an individual who is making an allegation that he/she is being discriminated against on the basis of sexual orientation or gender identity, we will draft the intake on that complaint and then we will go ahead under our work sharing agreement with the EEOC, we will then refer that complaint to the EEOC. The primary reason we do that is because the Dept. has interpreted the legislative actions over the last three sessions, I believe this is the fourth session in a row that this bill has come before this body, that there is clearly not the legislative intent that our current state law, the Human Rights Act covers sexual orientation. For those reasons, we won't open up a complaint under our state law, given its current status. We go ahead and refer those complaints to the feds. The EEOC specifically takes the position that discrimination on the basis of sexual orientation or gender identity is actually prohibited under current law under Title 7 of the Civil Rights Act on the basis of sex. The EEOC takes the position that that type of discrimination right now is discrimination on the basis of sex; therefore, the EEOC has been pretty aggressive on this front. They've even had some courts agree with them on that. I just wanted to be clear about how we handle those complaints. We don't track this particular statistic, so I can only give you some anecdotal evidence. I would say, on average, we typically refer between 1 and 2 cases per year to the EEOC on the basis of sexual orientation and gender identity. As far as the impact, if SB 2279 would pass, it's very difficult for me to gauge the impact it would have on the Dept. and how many additional cases we would receive. Some federal agencies have done some studies and those studies generally come in that the consensus of between 5 and 7% increase in caseload. Last calendar year, 2014, our office closed 206 investigations into complaints of discrimination. Based on that number, is we use an

average of 6% that would mean an additional 12 cases per year. Again, this number is based on a lot of anecdotal evidence and it's pretty speculative. It's difficult for me to determine what the impact would be. If this bill would pass, we generally speaking would be able to bring it in fairly easily into our system. I don't think it would have a significant impact on the department's caseload, mainly from the grounds that it would fit into our wheelhouse. We investigate several discrimination cases per year; therefore, I think it is something that we would be able to handle should this legislation pass. Otherwise I won't go into detail about the law; I think that's been covered.

Sen. Armstrong: Do you know what percentage of your cases that goes through your organization that ends up in civil litigation.

Troy Seibel: I do not. That's not something that we track. In terms of cause findings, when we make a determination that we believe probable cause exists, that a discrimination statute has been violated, in most of those cases, the individual elects to go the district court route because I think that they feel as though their remedies may be broader in district court as opposed to the administrative hearing route. I can't give you a definite number on that.

Sen. Casper: What is the percentage that had a probable cause finding?

Troy Seibel: It's very low; approx. 4% of the discrimination complaints that we investigate end up with a cause finding. The vast majority are cases where we've determined that there is no merit to the allegations.

Sen. Casper: You said you thought the caseload would go up if this law passed 5-7%. If you have 200 cases, it would go up 5-7%, so 10-12 cases. So of those 10-12 cases that reported, 4% of which would result in a probable cause finding, am I understanding that right or not.

Troy Seibel: I think that's my speculation, but I don't have any numbers. If we use the federal study and we look at that and say that it's a 5-7% increase, that would result in about 10-12 additional cases based on numbers from last year. What percentage of those 10-12 cases would have merit, I would have no idea.

Ch. Hogue: You referenced the 206 cases. I assume that the vast majority of your cases are employment discrimination type of cases and not discrimination for failure to provide some public accommodation. Is that true.

Troy Seibel: That's correct.

Ch. Hogue: How many cases relate to a complaint about a failure to provide public accommodations?

Troy Seibel: Of those 206 cases, 150 were employment discrimination complaints, so approx. 75%. Of the employment discrimination complaints we, for the most part, those breakdown into several categories but they really run the gamut. The bulk of them are sex, disability, race, those make up the largest amount of cases. A public service, public accommodation cases, they were in the ballpark of about 30 cases last year.

Ch. Hogue: Are you aware of cities that have passed ordinances on this issue. Can you tell me if you're aware of cases out there that are brought to city commissions or somebody within the city that relate to discrimination based on sexual orientation.

Troy Seibel: I'm not aware of any. If it's happening, it's not being brought to the Dept.'s attention.

Ch. Hogue: Thank you. Any further neutral testimony. We will close the hearing.

Written testimony was brought to the committee that was not read. They are as follows: Bernie Erickson, support (see attached 18); Jennifer Weisgerber, support (see attached 19); Christopher Dodson, Exec. Dir. ND Catholic Conference, opposed (see attached 20); Murray Sagsveen, Chief of Staff for Chancellor in NDUS office, support (see attached 21).

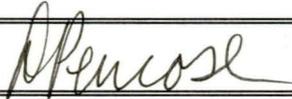
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2279
2/16/2015
23888

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: Let's take a look at SB 2279.

Sen. Nelson: I had an amendment drawn up 15.0742.01003 (see attached #1). This amendment takes gender identity out of the definition of sexual orientation and takes it out of the whole set of sections dealing with employment. Because it is no longer in the definition, we have to insert gender identity throughout the rest of the section of the NDCC. That is why you see all of those inserts because it is no longer in the general definition (explained the amendments). I move amendment 15.0742.01003.

Sen. Grabinger: Second the motion.

Ch. Hogue: What is the intent of the amendments?

Sen. Nelson: The intent was to remove gender identity from the definition of sexual orientation, first and foremost. To remove it from the entire section that deals with employment. To add it because it is no longer apart of sexual orientation to sections 1, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 19, 20, 21, 22, 23, 24, and 25; essentially leaves gender identity out of employment protections and puts it into the rest of the sections dealing with the other segments of the bill.

Ch. Hogue: To provide protection for the definition of gender identity for public accommodations and housing, but not employment.

Sen. Nelson: Yes. The way I understand it is that many of the companies that do business in ND now, have a position on sexual orientation and their definition blends more with the new definition than it did with others.

Ch. Hogue: I think I have an understanding, you're still keeping those definitions but for purposes of employment discrimination, we're tightening the definition to exclude the gender identity definition. Does everyone have a clear understanding of the amendments?

Sen. Armstrong: I do appreciate the attempt to try and do this. I view this issue as one of those deals where you have people who are never going to support it, people who are always going to support it and people who fall somewhere in between. I think the people who fall in between feel it is never going to be narrow enough who don't accept it; anything they would be willing to accept would be way too narrow for the people who support it to accept. At this point, given where we are at, I'm not going to support the amendment and my issue isn't with the exclusion; it's with the reintroduction in other areas. I think the bill should get a vote on the Floor and I think it will.

Ch. Hogue: We will take a roll call vote on the amendment. **2 Yes 4 No 0 absent. Motion on the amendment failed.** What are the committee's wishes.

Sen. Casper: I move a Do Not Pass.

Sen. Luick: Second the motion.

Sen. Grabinger: I was here last session and we struggled with this. We struggle with it every time and people are on the fence one way or another. I think it is something that is happening across our country, recognizing this issue and these problems associated with this. My personal thinking is we are here for all North Dakotans and I do not want to see discrimination anywhere where we can stop it. I think we see discrimination and by not supporting this and pushing this through, I think we are allowing that to continue and I think it's wrong. Hopefully, I firmly believe, that I'll be on the right side of society years from now for taking this stand.

Sen. Nelson: I'm not the prime sponsor on this bill for no reason at all. I think there is a problem. I think many people have seen the problem. Don't be surprised if a floor amendment doesn't show up, because the fight's not over.

Ch. Hogue: This is an issue that divides legislative bodies across the nation. I think a lot of people know where they are at, like Sen. Armstrong said, a lot of people are in the middle as well, and they are looking for a middle ground. I don't think this amendment, for me, provides middle ground.

Sen. Luick: I'm probably one of those a little closer to the middle ground, because of being hard right, hard left is probably not where I'm at; when I look at this bill and I look at the problems it could cause and I think about not necessarily the human rights issues of maybe somebody is being discriminated against, but the possibilities of the negative effect it could have to businesses because of it going the other way, where a business is forced to make decisions that they would not have to make today. If we were talking about discrimination, that's one thing. But if we're talking about the possibility of somebody being bullied, which could be entirely different there is a need then to consider those people who are initiating that bullying tactic to get some restraints put on them, but not to put it into NDCC to say that everybody has to act this way or that way, or another way. That shouldn't be our responsibility to do that, to put it into law that everybody has to act a specific way. That's why I can't support this bill. I understand the need/or desire for respect for a person's choices but I don't think we should be mandating how everybody else should feel about those issues.

Ch. Hogue: The clerk will take the roll.

4 YES 2 NO 0 ABSENT DO NOT PASS CARRIER: Ch. Hogue

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

- Page 1, line 13, after "orientation" insert ", gender identity"
 - Page 2, line 13, after "disability" insert ", sexual orientation"
 - Page 4, line 29, after the second underscored comma insert "or"
 - Page 4, line 30, remove ", or gender identity"
 - Page 8, line 20, after "orientation" insert ", gender identity"
 - Page 9, line 2, after "orientation" insert ", gender identity"
 - Page 9, line 10, after "orientation" insert ", gender identity"
 - Page 9, line 22, after "orientation" insert ", gender identity"
 - Page 10, line 1, after "orientation" insert ", gender identity"
 - Page 10, line 6, after "orientation" insert ", gender identity"
 - Page 10, line 20, after "orientation" insert ", gender identity"
 - Page 10, line 25, after "orientation" insert ", gender identity"
 - Page 11, line 5, after "orientation" insert ", gender identity"
 - Page 11, line 12, after "orientation" insert ", gender identity"
 - Page 11, line 18, after "origin" insert ", sexual orientation, gender identity"
 - Page 11, line 28, after "orientation" insert ", gender identity"
 - Page 12, line 17, after "orientation" insert ", gender identity"
 - Page 12, line 21, after "orientation" insert ", gender identity"
 - Page 12, line 26, after "orientation" insert ", gender identity"
 - Page 13, line 1, after "orientation" insert ", gender identity"
 - Page 13, line 8, after "or" insert "based upon"
 - Page 13, line 8, after "orientation" insert "or gender identity"
 - Page 13, line 30, after "orientation" insert "or gender identity"
 - Page 14, line 7, after "orientation" insert "or gender identity"
- Re-number accordingly

Date: 2/16/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2279

Senate

JUDICIARY

Committee

Subcommittee

Amendment LC# or Description: 15.0742.01003

Recommendation: Adopt Amendment

Do Pass Do Not Pass Without Committee Recommendation

As Amended Rerefer to Appropriations

Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Nelson Seconded By Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Hogue		✓	Sen. Grabinger	✓	
Sen. Armstrong		✓	Sen. C. Nelson	✓	
Sen. Casper		✓			
Sen. Luick		✓			

Total (Yes) 2 No 4

Absent 0

Floor Assignment _____

Motion Failed

Date: 2/16/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2279

Senate

JUDICIARY

Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Casper Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger		✓
Sen. Armstrong	✓		Sen. C. Nelson		✓
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen. Hogue

REPORT OF STANDING COMMITTEE

SB 2279: Judiciary Committee (Sen. Hogue, Chairman) recommends DO NOT PASS
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2279 was placed on the
Eleventh order on the calendar.

2015 HOUSE HUMAN SERVICES

SB 2279

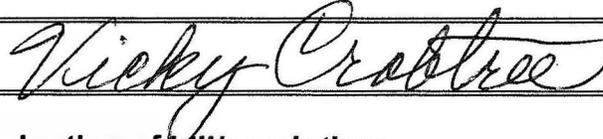
2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2279 A
3/23/2015
Job #25273

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to prohibition of discrimination on the basis of sexual orientation

Minutes:

Testimonies 1-25

Chairman Weisz opened the hearing on SB 2279.

Rep. Joshua Boschee: From District 44 introduced and supported the bill. (See Testimony #1 and Handout #2)

18:09

Rep. Mooney: What is the number of LGBT in ND?

Rep. Boschee: 1.8% of ND.

Rep. Damschen: You asked is it better to allow a couple employers discriminate against sexual orientation or gender identity to continue to do so; and then you go on to say the result of that is hundreds of LGBT North Dakotans leave the state. Who is the employer that would employ that many?

Rep. Boschee: I'm not implying that it is one or two employers that would employ all of those LGBT people. I'm saying as an economy workforce we are losing people by the hundreds each year.

Rep. Damschen: Is that the only reason people are leaving?

Rep. Boschee: I think there are a lot of reasons people leave the state.

Rep. Porter: In your testimony you talked about larger employers in ND that already have policies in place. One of the individuals that contacted a number of us in an e-mail talking about gender discrimination; when I followed up, actually listed one of the ones you listed as being the one who was discriminatory against them. In your list are you saying they have specific written policies or it is just perceived they don't discriminate?

Rep. Boschee: That list includes all employers who have sexual orientation as a protected class and a number of them include gender identity. They may not be all inclusive of gender identity, but do all include sexual orientation as a protected class.

Rep. Porter: Do you think in that group you gave us there are companies listed that just put a policy in place and are not following it?

Rep. Boschee: I don't think so. Most employers try their hardest to follow the policies.

Rep. Porter: It seems like the individual even though the company had a policy in place, were using that just to sound the alarm rather than what the real reason was. That causes concerns among employers in ND. As you start developing more and more laws and eroding the right to work side of the equation that all of a sudden you can sound the alarm rather than really looking at the reason for your employment issues.

Rep. Boschee: I would agree. We don't want people sounding the alarm if it not the actual case. That is where the Dept. of Labor steps in and filters that out. That is not an option today. There is no one to referee that.

Rep. Porter: Under North Dakota's right to work laws, I don't have to provide a reason why I don't employ someone. I just pay employment benefits right away. I can fire with or without cause. How do you see this playing into the current ND right to work laws?

Rep. Boschee: We have protected areas where you can't discriminate based on certain things. We are looking at this at the same level so that employers aren't using that reason to terminate.

Rep. Porter: Inside the Dept. of Labor and if there are perceived problems and issues, how many cases do you see per year the Dept. of Labor handling? How many calls have they received and they say that isn't what we deal with right now? I need to know if we need a fiscal note for FTE's for the Dept. of Labor to make this work.

Rep. Boschee: They don't currently keep track of those calls. They can transfer some files depending on the nuances of the claim to the Federal EOC. There have been two cases where straight men were being perceived as homosexual. There could be a potential of 4-5 cases per year.

Rep. Porter: The national spotlight has been in a couple of situations where this particular chapter protects religious organizations, but not an individual's beliefs. Inside of this bill what happens to the photographer who refuses to do the business?

Rep. Boschee: The same thing would happen to them if they used their religion to not serve a black person. It would be seen as a discriminatory practice.

Rep. Porter: Who then enforces that complaint?

Rep. Boschee: I'll refer that to the Dept. of Labor.

Rep. Porter: Is there a state penalty, a misdemeanor or what is the individual charged with?

Rep. Boschee: I'd have to defer that to the Dept. of Labor as well.

Rep. Damschen: There has been a vote on gay marriage and a significant majority of North Dakotans oppose it. Would you give that the same credence as the other vote you mentioned?

Rep. Boschee: That vote was 10 years ago, but this isn't about gay marriage.

Rep. Damschen: I understand that. I just wonder if you give that the same respect to that vote.

Rep. Boschee: I would.

Rep. Damschen: I know you have it defined in the bill, gender identity and sexual orientation, but looking at a report from Dr. Palmer Hugh MD at the John Hopkins School of Medicine and Jerard B. Bradley Professor of Law at the University of Notre Dame report that social science research continues to show that sexual orientation unlike color and ethnicity is neither a clearly defined concept or nor immutable characteristic of human beings. They go on to say there is no scientific consensus on how to define sexual orientation or various definitions proposed by experts, produced substantially different groups of people. There seems to be a concern because it is so elastic the definition even though you have got those terms defined in the bill. How do we guarantee that does not go beyond as to what is defined in the bill?

Rep. Boschee: That is why we define it so we know where the parameters are.

36:00

Rep. Thomas Beadle: I don't believe homosexual is a choice. You are that way. If you believe it is a choice than you will never support non-discrimination protection laws. I stand in support of SB 2279. There is a generational divide occurring across the country and even if it doesn't change now it will in the future as more young people get involved and civically engaged. I was working on an amendment to get word of the "perceived" wordage.

Rep. Damschen: This group or deleted or made an exception in the Constitution. I believe the rights that are guaranteed all of us are for all of us. I don't think any group is excluded.

Rep. Beadle: I don't disagree with you. We need to clarify our civil liberties. The Constitution has not been interpreted properly by the law to apply to everyone.

Rep. Damschen: Don't we run the risk of listing everyone when we enumerate the people to be covered by non-discrimination acts?

Rep. Beadle: I don't disagree.

Rep. Mooney: Do you think that would be a good idea to list everyone?

Rep. Beadle: We don't want to leave anyone out and put as many as possible under the same umbrella.

44:20

Sen. Erin Oban: Supported the bill, handed in a Testimony of Lucas Stroh and read it. (See Testimony #3) (Handed in Testimony for herself. See Testimony #4)

49:00

Aaron Weber: NDSU Student (See Testimony #5)

54:16

Becky Lamboley: Director of Student Affairs for the NDU System testified in support of the bill. (See Testimony #6)

58:52

Rep. Oversen: The policy you mentioned you said they applied to students and I assume also applies to faculty and staff?

Lamboley: We have a separate policy for faculty and staff.

Rep. Porter: I on the back of your testimony you talked about if the LBGT student were to step off campus. Does the university system track any of the incidences that have taken place in regards to that statement or is it just conjecture on your part?

Lamboley: What is formally filed we do have records of that, but when you know there is no law to support who you are, I'm not sure I would bring that forward. I don't have numbers for you.

Rep. Porter: But, you do have some numbers or you don't have numbers? If you do, I would like to see them.

Lamboley: I'll see what numbers we have.

Rep. Damschen: How do you determine if someone was denied some public service because of perceived sexual orientation?

Lamboley: It has to be reported to know the numbers and what it looks like. People make assumptions on my looks. They may think I'm gay when I'm straight and fire me, or fire me because I'm gay.

Rep. Damschen: If someone made that assumption and they were wrong, wouldn't that be violating the rights of the heterosexual?

Lamboley: Can you clarify?

Rep. Damschen: If a person was going to deny renting an apartment because he thought someone was gay and they weren't; wouldn't that be a violation of heterosexual rights?

Lambole: Right now that isn't protected at all. This bill would protect heterosexual rights as well as non-heterosexual rights.

Rep. Damschen: But, they aren't listed in the bill.

Lambole: They aren't listed. We could make a friendly amendment to that.

Rep. Damschen: We may have some classes that are unprotected and need to be listed.

Lambole: It's possible.

Chairman Weisz: You referenced earlier about numbers off campus. Do you have any data on students you send out for internship programs as discrimination that has occurred within that? I would think that would come back to the university system.

Lambole: I know we have numbers of those who participate in internships as a requirement of their program. I may be able to gather data of those who have internships just as a personal choice of that student. I'm not sure we have data on any discrimination, but I'll look into it.

Rep. Porter: In your previous comment you talked about a look or the look. If an individual is employed and part of their job responsibility is to deal with the general public and went out and got a tattoo on their face. And the owner of the business perceived it was a look that was costing them business; would you see inside of that look that they could fire that person because of the look?

Lambole: I believe businesses have the right to make those decisions.

Rep. Porter: It is ok to discriminate against those individuals that do that?

Lambole: It is never right to discriminate.

Rep. Rich Becker: My wife and I were in a restaurant several months ago and across the aisle and a table up another couple were engaging in comment with the waitress. The waitress had ear, tongue and nose piercings and they were quizzing the young lady why she had such excessive piercings and she said it was her right to do that. They asked for a different waitress. She called the manager over and he told the couple that he totally agreed with them, but his hands were tied and there was nothing he could do and he had lost other customers because of that waitress. Do you think that is fair?

Lambole: I'm not prepared to comment on that today.

Rep. Damschen: I assume you are aware that a person can like a person, but still not like the things they do. Is it right that a person has a strong religious conviction about the

homosexual lifestyle and that it is not acceptable to rent an apartment to a homosexual couple? He shouldn't he have that right to not rent it to them?

Lamboley: When I am employed to rent out apartments, do I have my employee hat on and my religion is separate from that? How do a grapple with that personally having a belief system that is different from what I'm asked to do as an employee?

Rep. Damschen: That doesn't answer my question. If a person owns a building and he would be enabling a lifestyle if he does not promote; does he have the right to say no?

Lamboley: No he shouldn't have that right.

Rep. Damschen: In this case we would be violating his religious rights.

Lamboley: We could grapple with this.

Rep. Damschen: You think it is alright to restrict his religious freedom for sexual orientation?

Lamboley: I believe the employee has to grapple with an ethical decision.

Rep. Damschen: He is the owner.

Lamboley: That is the part of it.

Rep. Mooney: There are 47,660 students out of 11 campuses. That seems like quite an expansive organization. Does that include the contract with non-state related companies?

Lamboley: That is incorrect. That is only 11 public institutions.

Rep. Mooney: Does the campus contract with non-state related entities for catering, etc.?

Lamboley: This is just students enrolled for the purpose of completing courses.

Rep. Mooney: As a campus, do you not contract for certain services that are not specifically state paid employees?

Lamboley: Some are and some aren't.

Rep. Mooney: Do you have knowledge of complaints, resistance or reports of objections to the anti-discriminatory policies in place by the higher education system.

Lamboley: I don't have that information, but could seek it.

1:17

Mack Schneider: Testified in support of the bill. (Handed in testimony of Max Maltese. (See Testimony #7)

1:20

Chairman Weisz: Do we open up a potential that someone fired for a tattoo and now can claim they were fired because of discrimination? How does the employer prove they fired the employee because of other reasons?

Schneider: The burden would be on the employee that they were fired for discriminatory reason. That is difficult to prove in many cases. I don't think it opens it up any more than a person with a tattoo says he was fired because he was Catholic.

1:22 - 1:26

Tom Ricker: President of the ND AFL-CIO in ND. (See Testimony #8, and Handout #9)

Bernie Erickson, Fargo ND: Testified in support of the bill. (See Testimony #10.)

1:33

Rep. Mooney: Mr. Chairman, this is an important issue. I strongly object that these people have to do a quick time order to testify. I respectfully request that these people have time to testify. (Audience erupts.)

Chairman Weisz: (Hits gavel.) Could we please have order in the committee? Order please. (Hits gavel.) Please. This is a committee hearing. It is not my intent to limit testimony. I am asking for comments to be brief if they are repeating the previous testimony. We are limited in the total amount of time we have. That is the way this process works. We have limited many hearings in the past. It is not my intent to stop anyone. If you are saying the same thing, often times we ask for people to keep it brief and not to repeat what has already been said. It is not out of line and the same rules will apply to the other side. Are there are questions for the presenter at this time?

1:36

David Hamilton: (See Testimony # 11) (His testimony is on the backside of Testimony #10)

Faye Seidler: Testified in support. (See Testimony #12)

1:44

Rep. Mooney: When it had been better for you not to disclose your gender identity?

Seidler: I know businesses don't have familiarity with this and I forgive them if they don't have it, but I would like them to work with me on it. I had to come out so they could have the policies in place when I did my transition. In May of last year I told them I would be transitioning.

Chairman Weisz: Sanford had no policy at all when you were hired, correct?

Seidler: They have no transgender specific policy. They have a sexual orientation policy which I asked them about. There was no policy for transgender.

Kristen Benson: Testified in support of the bill. (See Testimony #13)

1:52

Rep. Damschen: I've heard from several recovered homosexuals who are no longer practicing. How do you explain that?

Benson: Those cases are generally through faith communities and not practices endorsed by any mental health association. There is no scientific evidence that orientation or identity itself can be changed. Those are core (inaudible) of who a person is.

Rep. Damschen: There is no gene known that causes it.

Benson: That research is inconclusive.

Andrea Rebsom: Testified in support of the bill. (See Testimony #14)

2:06

Brad Aune: Retired US Marine and US Army testified in support of the bill. (See Testimony #15)

2:11 - 2:29

Jennifer Cook: Policy Director for American Civil Liberties Union of ND. (See Testimony #16, and Handout #17).

Micki Mertz: Testified in support of the bill. (Testimony #18)

2:34

Nancy Willis: Director of Government Affairs of ND Association of Realtors testified in support of the bill. (See Testimony #19)

2:35

Joan Glaser: Testified in support of the bill. (See Testimony #20)

2:40

Kevin Tengesdal: Testified in support of the bill. (See Testimony #21)

2:45

Rev. Gretchen Deeg: Testified in support of the bill. (See Testimony #22)

2:49

Peg Haug: Testified in support of the bill. (See Testimony #23)

2:53

Joe Vetter: Testified in support of the bill. (See Testimony #24)

2:55

Ann Porter: Testified in support of the bill. (See Testimony #25)

Chairman Weisz: We are going to recess for lunch and will finish the hearing after the floor

session.

Handed In Testimony and Handouts in Support

Susanna Warner (See #26)

Riah Roe (See #27)

Derek LaBrie (See #28)

Sen. Carolyn Nelson (#29)

ND Realtors Association (#30)

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2279 B
3/23/2015
Job #25302

- Subcommittee
 Conference Committee

Committee Clerk Signature	
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Explanation or reason for introduction of bill/resolution:

Discrimination against sexual orientation.

Minutes:

Testimonies 1-13

Chairman Weisz reopened the hearing SB 2279.

Jared Kellerman: Testified in support of the bill. (See Testimony #1)

9:10

Tim Johnson: Pastor of Evangelical Lutheran Church in America testified in support of the bill. (See Testimony #2)

12:18

Kyle Thorson: Testified in support of the bill. (Read the testimony of Karyn Hippen See Testimony #3) Kyle reads his testimony. (See Testimony #4)

17:00

TJ Jerke: Legislative Coordinator for the ND Human Rights Coalition testified in support of the bill. (See Testimony #5) (Handed out a testimony for Suzie Bartosh. See Testimony #6)

27:59

Rep. Damschen: I assume you verified all the charges in this letter.

Jerke: The ones in the USC?

Rep. Damschen: The accusations against Teen Challenge?

Jerke: Susie would be here today to testify, but she can't be with us today.

Rep. Damschen: She would have a way to verify them?

Jerke: Yeah. I can work with her to communicate with the committee.

Rep. Damschen: I'd like to hear the discussion on both sides and not take just one person's word for it.

Jerke: I'm sure Teen Challenge would be happy to.

OPPOSITION

30:00

Tom Freier: With the ND Family Alliance testified in opposition of the bill (See Testimony #7)

38:48

Kellie Fiedorek: Testified in opposition of the bill. (See Testimony #8)

56:16

Rep. Fehr: Can you tell us of any states that model laws to sexual orientation, anti-discrimination, but don't have these unintended consequences you were talking about?

Fiedorek: I have traveled all over the United States speaking and I have not seen any that have been enacted that don't raise the same exact concerns. The cases we litigate are in a wide variety of states under a wide variety of laws. These laws empower the government to threaten the Constitutional freedoms and there is no way around that.

Rep. Fehr: Are you saying every single state where they have passed these laws they have these examples.

Fiedorek: Many states that have these laws have cases pending and if not now likely soon because of the way they are written.

Rep. Damschen: We heard testimony from the other side preparing this subject to race and gender. Is that a fair comparison?

Fiedorek: It is an unfair and unjust comparison. The government forced our African American brother and sisters to drink from separate fountains and go to separate schools and be at the back of the bus. Our country rallied against that and good men and women stood up to fight what they had to endure. To equate the type of discrimination they had to endure for years is an unfair comparison.

Rep. Mooney: Based off from what you have mentioned there, how many instances are ok?

Fiedorek: Obviously, what they are talking about today is the dignity of every single person always needs to be respected and upheld. The government is here to pass protect and sustain Constitutional freedoms not to undermine those freedoms. Laws like this undermine the freedom of everybody regardless of sexual orientation.

Rep. Mooney: You mentioned several law suits with regards to other states with LBGT state laws that had been enacted. Do you have examples of lawsuits derived from the disabilities act, age discrimination, etc?

Fiedorek: There has been a lot of research done on that. When laws were changed to allow inter-racial marriage to happen, a law professor looked at lawsuits that challenged religious beliefs that were not let them photograph or participate in some way. They found none. These laws across the country are forcing people to violate their beliefs at the hands of the government.

Rep. Mooney: Are you a registered lobbyist?

Fiedorek: I'm here as a roll of a guest of Tom.

Rep. Oversen: I support the rights of religious beliefs. Why is that protection afforded to them say there is a Christian who doesn't believe in Judaism or Hinduism? We don't allow them to discriminate against them so why is it ok for them to discriminate at sexual orientation?

Fiedorek: It comes down to the issue on what is non-expression versus expression and what does the Constitution protect? You should be free to engage in expression that is consistent with your sincerely held beliefs. It is not so much an issue of sexual orientation, but what is expression and what is if you are engaging a certain kind of expression. The Supreme Court is very clear on that. You should be able to engage in speech that is consistent in what you believe.

Rep. Oversen: She the florist that has a lawsuit against her, she should have been allowed to refuse service to a couple who was marrying in a faith she didn't agree with?

Fiedorek: In her situation it came down to a belief of what kind of events does she want to lend her creative ability to. For her marriage is sacred and such to participate in something she doesn't believe in would violate her beliefs. We could talk about hypotheticals all day long, but what it comes down to is that the first amendment does apply to everyone and applies to businesses. You should be free as a business owner to engage in expression that is consistent with your beliefs.

Rep. Oversen: Could you provide the committee information on the Catholic Charities case you mentioned?

Fiedorek: I'd be happy to do that.

Rep. Mooney: Are you saying the first amendment rights supersede the other amendment rights?

Fiedorek: I'm saying the first amendment is one of our fundamental freedoms. The freedom to exercise our faith and the freedom to speak freely if something is of paramount importance. The government has compelling interests at times that do supersede those

interests. By the end of the day there are very important freedoms that I think we are all grateful to have as Americans.

Rep. Mooney: You agree the fourteen amendment is important?

Fiedorek: Obviously they are both important amendments.

1:11

Tom Freier: Finished reading his testimony. (Refer to Testimony #6)

1:12

Rep. Oversen: Regarding a self-identified perceived characteristic means that it is not immutable; can you draw a distinction for me between that and religion? Why is religion a protected class?

Freier: The immutable part in this context of course given the transgender component of it, we know there is an ability there to change. The bill itself talks about that you are able to self-identify to fall within the contracts of the bill so it does not jive with immutable. I think religion as Kelli mentioned that the first amendment is very strong on our ability to exercise the freedom of religion and expression thereof. So the folks that fall into that category can easily use that to substantiate their views.

Rep. Oversen: I think there is a difference of your first amendment of freedom of expression and the freedom of discrimination based on your religion.

Freier: There is a foundational factor involved in the first amendment right that really does precede our discrimination law. And that is our freedom of religion and our exercise thereof. That is foundational to the religious aspect of it.

Rep. Damschen: Do you feel like our Constitution found wanting in declaring that all men are created equal and everybody has inalienable rights and those rights are protected? Do you see any exceptions in the Constitution?

Freier: The Constitution is very clear and provided for the freedom in many aspects for all.

Rep. Mooney: The three that have common denominators were, prejudice, supremacy, unreasonable accommodations, special class, and religious liberties for why we should not have included race, women's rights, and disability discrimination and anti-discrimination laws. Are you saying we need to do away with all of those if LGBTs shouldn't be considered in a class of protection?

Freier: No, I am not saying that at all. I am saying that I believe that as I share my testimony in ND today, I am comfortable that we are showing respect and dignity for all in this state. The bill talks about employment, accommodations and all those things and I fail to understand that those areas are being compromised to a great degree.

Rep. Fehr: Can you give us evidence of what you are referring to in your testimony? Are you stating that people can change their sexual orientation and that it is willful?

Freier: I am referencing there because it is self-identified and self-perceived of sexual orientation to their employer may change. They may represent themselves as something one day and the next day it may be something different.

Rep. Fehr: You are saying they can claim something different and doesn't mean something is really different?

Freier: When we talk about the transgender and that sort of issue, they perceive there is a change.

Rep. Fehr: This relates to the Supreme Court criteria and immutable so my question is does it imply that if in fact the preponderance of the evidence says it is immutable in terms of sexual orientation; and therefore that should be a protected class?

Freier: I don't quite understand the question.

Rep Fehr: The question is because that is part of the criteria you listed with the Supreme Court, that if the evidence that is presented to us is pretty convincing that it is immutable, does that immutable mean it should be a protected class?

Freier: The immutable part of it is pretty clear. The bill does not lend itself to that definition of immutable.

Rep Oversen: On self-expression, if there is a Christian business that says same sex marriage is wrong, then they would be able to discriminate against single parents, and adultery? Where do we draw that line?

Freier: The First Amendment right of expression allows a business owner to express themselves in their artistic ability and made that determination. We are treading on hypotheticals. I believe in ND and we are doing okay and we are looking for a political solution which is not as prevalent as some believe. The bill is on sexual discrimination based on sexual orientation and gender identity. The (inaudible) that could be open to litigation .

Rep Oversen: Are you suggesting that the fear of litigation is a reason not to pass a bill protecting someone against discrimination?

Freier : I believe there is a bit amount of fear and a sense of intimidation that come from not wanting to be on the wrong side of this issue that may open cases of litigation. If this bill would pass that would open that up to a great extent.

Rep Damschen: Do you see concerns in that sexual orientation is considered to be by some a frame of mind, but race is not. With race there is fiscal evidence that we don't deny and in gender too. How do you get a handle on some that feels they are not what the physical evidence indicates? There are cases where sexual orientation has changed and maybe changed back again. What determines that to enforce the law? What do you use?

Freier: This is defined by conduct, behavior, perception, mannerisms and the difficulty in fact with which someone who could be potentially accused of that discrimination, how would they know? The opportunity for someone in a religious organization, business or anyone to respond is really difficult given how that criteria is set forward.

Rep. Rich Becker: Rep. Oversen's comment about fear of this vote and fear of the law; the comment I want to make is through the correspondence, phone calls and e-mails I've heard about sexual orientation ties into what I am hearing so much more now than I've ever heard before which is the heavy hand of government. I'm concerned that the heavy hand of government is having an impact on how people feel about this specific topic. I know people in the Senate voted for this a couple of weeks ago in fear of how their small businesses would be perceived and thought of if they did not support the bill. I think there is a heavy hand of government that is a factor in here.

Freier: This is an issue of treating people with respect and dignity. What this does is places government in the position of coercively enforcing that. The inability to discern someone's sexual orientation is rather difficult.

Clint Fleckenstein: Photographer, testified in opposition of the bill. (See Testimony #9)

1:42

Rep. Oversen: Where in the Bible does it say that it is ok to discriminate and treat others different.

Fleckenstein: You have heard of a different Jesus today than the Jesus in the Bible because Jesus said He came to bring sinners to repentance. The whole idea of Jesus coming is that everyone of us in this room, clergy or not are sinners. We all admit it as Christians and we need Him for redemption. The fact of the matter is He came point out our sin and is only because He didn't sin that through his death, burial and resurrection that we are able to meet God and go to Heaven. That is the fundamental tenant of Christianity and dare say that religious freedom was a fundamental tenant of which the United States was founded.

Rep. Oversen: What is your full time employment?

Fleckenstein: I'm testifying as a part-time photographer.

1:44

Alison Grotberg: Testified in opposition of bill. (See Testimony #10)

1:54

Rep. Mooney: Do you feel you have lost your religious liberties because people of race, women and disabilities; people of class of population that require protections?

Grotberg: There is no law in the Bible that says thou shall not love a black person, or not have black skin. Sexual immorality is addressed frequently in the Bible and according to Biblical definitions does fall under that.

Rep. Mooney: I am a Christian. What are some of the arguments used for some of the other discrimination laws we have enacted state or federally? In each of those cases religious liberties is used as an example. Do you think your religious liberties have been trampled on by those three instances?

Grotberg: I have no idea what that has to do with this testimony because this testimony is about being forced to make a t-shirt for gay pride or strip tease club when you don't feel comfortable with the (inaudible) female body for the purpose of the (inaudible) or a lifestyle that goes against Biblical teaching.

Christopher Dobson: President of the ND Catholic Conference testified in opposition of the bill. (See Testimony #11)

2:00

Chairman Weisz: Can you expand on your statement of the bill's exemptions do not exempt any religious entities?

Dobson: The first exemption only applies to employment situations. It does not apply to housing or public accommodations. To employment matters, only which regards to how religious positions. That is already protected under the U.S. Constitution it is called the ministerial exception which was held up unanimously by the U.S. Supreme Court a few years ago. It does not apply to the sexual orientation provisions of the bill. It is mostly with regards to religious discrimination claims. The second one only applies to employment matters when hiring for non-religious positions, but only extends to preference for hiring individuals of the same religion or adherence to the religious tenants. That is a defense against a not a sexual orientation claim. It basically requires the church to have an (inaudible) policy of limiting non-religious positions to individuals of the same religion or adhere to the religion's tenants instead of allowing the church to make that decision on a case by case basis. The third exemption only applies to limiting admission to places of worship. Another defense about religious discrimination to places of worship and only applies to parochial schools. It doesn't apply to sexual orientation provisions. The very idea that the state could create an exemption on matters of admission raises a host of Constitutional questions. Many religious schools are not parochial so it doesn't cover them, an example is Shiloh. Not one of the three exemptions does anything to address the problems raised about sexual orientation claims that would be given the protection under the law in this bill.

Rep. Oversen: Maybe you could e-mail the committee with better suggestions to address those exemptions.

Dobson: I have to tried to draft, I think you would have to exempt completely the accommodation section, add the Religious Freedom Restoration Act into it and then exempt completely all religious organizations and then that still wouldn't address our fundamental concern of the bill, which it gives special legal protection to acts.

2:05

Reed Soderstrom: An attorney from Minot stated his opposition of the bill. My concerns echo Mr. Dobson's. The bill as it exists now contains ambiguity and creates legal issues of

uncertainty. There is more confusion than clarity. The definition of gender identity itself speaks of in terms of subjective perception of one's related identity. And I think to put that burden on ND employers to interpret that is nearly an impossible standard. There is no definition of a religious association or society, religious organization or even non-profit institution that operates in conjunction with them. I'm wondering if this so called religious exception includes groups like we had in Minot included Youth for Christ and Campus Crusade. I was wondering about Teen Challenge and we have already heard comments about them. Addiction counseling centers, domestic violence groups, pregnancy centers and the list goes on. There is a lot of ambiguity and there is no clarity. Does it include volunteers? I think the answer is no and it puts them at risk for litigation and exposure. For those reasons I am urging the committee a Do Not Pass on this bill.

Rep. Oversen: When we look that this language was pulled from other states as an attorney, have you researched other cases to know if that ambiguity has been a problem and is it something we can address?

Soderstrom: We heard from Ms. Fiedorek and all read the articles that is going on nationwide it is not good and I hope it never comes to this state.

Rep. Oversen: Is that because of the ambiguity of the law?

Soderstrom: It is because of the enforcement and the lack of protection of religious liberties, yes.

Rep. Mooney: I'm looking at our human rights act now, we also don't define religion or religious practice according to the human rights act in that section of code. Is that a problem for litigation purposes?

Soderstrom: I think it is. Some of the comments I heard today that concerned me include this is a real good first step. This is a starting point. I totally buy into to that what we are seeing nationwide. This is the beginning of what I see is bad things to come for religious liberties. There are a lot of people who think you can put God in a box and pull Him out on Sunday morning when there are a lot of people of faith that are doing the best they can to follow the written word of God throughout their lives daily in their work place and vocation. This bill 2279 has the potential to trample on that.

Rep. Mooney: You mention that bad things to come for religious liberties based on this piece of legislation.

Soderstrom: Not necessarily on this. But I heard this is a starting point of further legislation.

Rep. Mooney: Based on this legislation wouldn't it be a good first step for the LBGTs who currently have silent laws.

Soderstrom: We heard compassionate heart breaking stories. We want to make the world a better place. My brother is gay so I understand it and I love him dearly, but let's not get off into the periphery and talk about solving the world's problems. We are here today about

discrimination and how it exists today in ND. We are here today primarily about employment and the vocation, and housing. When you break it down what I heard was employee harassment not employer. I didn't hear a lot of need for this law.

Kathy Stein: Lives in Rugby, ND testified in opposition of the bill. I ask you to vote against SB 2279. Society accepts the LGBT lifestyle.

2:17

John Legonfelder: Stated his opposition of the bill.

No more opposition testimony to the bill.

Troy Seibel: Labor Commission provided information.

Chairman Weisz: If someone has put in a complaint about harassment at work for any reason, what does the department do about it?

Seibel: They would have to fall under one of the protected categories that are set forth in the Statute. In order to bring a hostile work environment claim you have to allege that the hostile work environment was because of your race, color, national origin, gender etc.

Rep. Mooney: If this would pass, how many cases would you anticipate?

Seibel: In Minnesota, sexual orientation has been a protected category since 1993. On average of their total discrimination load, sexual orientation complaints are 4%. In ND maybe 10-12 cases in a year in the caseload.

Rep. Mooney: How many cases do you have right now and how many are enforced as an end result?

Seibel: We should get about 300 discrimination cases and approximately 30 public service public accommodation cases. And probably about 30 housing cases. Maybe one case in twenty is a cause finding case. About 5% of our cases in a typical year result in a cause finding.

Rep. Mooney: When you have a cause finding, what does the processes look like?

Seibel: It depends if you are under the human rights act or housing discrimination act. If under the human rights act if we make a finding of no probable cause that individual has the ability to go to court. If we make a cause finding the charging party are given the option to go to district court on their own or have the department conduct an administrative hearing with the office of administrative hearing. Under the housing discriminatory act either the complaining or responding party can make an election between going to district court or having an administrative hearing. Either way the department brings that complaint. The Attorney General represents the department.

Rep. Mooney: How many were found guilty?

Seibel: They are settled on the front end. I don't have specific data for you on how many resulted in a favorable verdict for the charging party.

Rep. Damschen: Do you deal with employee vs. employee?

Seibel: It comes down if the employer is liable for the acts of its employees. The situation will be the employee bringing allegations against their employer. It is employee vs. employer.

Rep. Damschen: In a criminal offense who would the offended party go to in a case like that?

Seibel: We would look at it from if the human rights or housing discrimination acts were violated. That individual could go to law enforcement if criminal charges were going to be brought by the State's Attorney.

Rep. Porter: A couple of the examples passed out in one of the packets had actual letters from your department that in the letter is states it was a transfer of charge because it was a lack of jurisdiction. Inside of your department how often are you doing that service?

Seibel: Is your question in general?

Rep. Porter: In general. You are doing an action that should be trackable.

Seibel: Correct. We can track the number of cases we refer to the EEOC. That number is few. We have referred only 7 cases in total to the EEOC.

Rep. Porter: There was a lot of discussion about an individual business refusing to do business with an individual. Do you view this law as you being the enforcer of that component of the law? What do feel the number of cases from that aspect would be?

Seibel: It is referred to as a public accommodation case and that involves anyone who provides services to the public and charges a fee or goods for its services. Generally you will be covered by that piece within the human rights act. Our office does enforce violations of the human rights act so that would include allegations where there has been a discrimination in the area of public accommodations. I do not recall a case of a sexual orientation discrimination of accommodation allegation coming to our office. To my knowledge we have not received a complaint. We do enforce the public accommodations portion of the human rights act.

Rep. Porter: By using the word perceived. How would your agency when pursuing the law view perceived? Is it perceived at a particular moment in time, over the course of a relationship between employee and employer or renter and landlord?

Seibel: It would be the charging party's burden to establish that their employer or landlord perceived them as a certain type of orientation. If the employer would say I'm firing you because I think you are straight, that would be essentially what would trigger this protection. The same as vice versa. Right now under the human rights act and the and

ADA I can perceive you as someone with a disability and take adverse employment action against you. The perceived claim gets you in the protective category. The charging party still has to show they were subject of a discriminatory practice. The perception has to occur at the time of the discriminatory practice.

Rep. Porter: What about the employee that walks in on Monday and has totally changed their appearance with a full faced tattoo or piercings or something that is not going to fit my business model and they complain to you because they were fired because of their appearance? What if Sam who I hired comes the next day as Samantha and that doesn't fit my business model, how are you as an agency going to look at those two different scenarios in regards to this law and discrimination?

Seibel: The tattoo and piercing does not fit into a protected category and we wouldn't take that charge. The charging party is a prima fascia case. They have to show a, b and c and prove it before they get their foot in the door. Once they have their foot in the door then there is something we call the McDonald Douglas burden shifting frame work. That shifts to the employer and says we have a prima fascia case; why did you terminate that employee? If the employer comes to us with a legitimate non-discriminatory business reason for the determination, then the burden shifts back to the charging party to show that is pretextual. In other words the employer is lying and making that up. If the employer can show a legitimate non-discriminatory business reason the case will fail.

Rep. Porter: At some point all of these cases become he said she said. I come back and say no this is what I perceive. My business has been affected this act. You look at it and say whether or not it is enough to shift the burden back to the other side.

Seibel: Some cases may become he said she said because that is the only evidence out there. We would show ever since this individual has been working can you show with receipts at the till or business performance or testimony from customers. What are the facts being alleged we investigate everything.

Rep. Porter: How does it play into loss of productivity if it causes a disruption in the rest of your workforce and how would you go about proving that side of the same claim against the newly established protected class?

Seibel: If you can talk to the 10 employees and talk about how this is being disruptive in the work place, that could be a good non-discriminatory business reason. It would be testimony of others saying there is a disruption in the workplace.

Rep. Porter: Wouldn't that also allow a group of employees gang up on one individual use that to get rid of them?

Seibel: It is possible. We train our people to assess credibility.

Chairman Weisz: If a business didn't want to make a cake because they didn't support marriage accept within their own church could you have a complaint in that nature?

Seibel: Yes you could.

Chairman Weisz: If a cake business said I won't do business with you because I don't believe in your religion, they wouldn't be able to bring a claim for public accommodation, or could they?

Seibel: They could.

Chairman Weisz: So currently you could force them to bake a cake?

Seibel: In theory we could, but more than likely by the time it gets to us it is long in the past and already had the cake made. Yes I guess we could.

Rep. Porter: (Microphone off so inaudible.)

Seibel: We don't have authority under the human rights act to fine. The only thing we can do is issue an injunction to either prohibit or force someone to do something. If we gave an injunction and they violated that we would have to go to a district court and a judge would decide if there would be any fine.

Chairman Weisz closed the hearing on SB 2279

Handed in Testimony in Support

Grand Forks Herald (See #12)

See Testimony #13 - Approximately 1,000 additional letters of support filed in the Legislative Council Library.

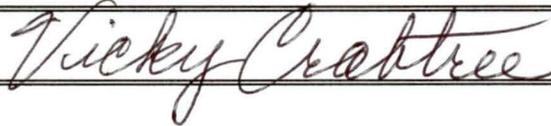
2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2279
3/25/2015
Job #25439

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

See Handout 1-2

Chairman Weisz took up SB 2279.

Rep. Fehr: (Handed out his and Rep. Beadle's amendments. See Handout #1 and #2.) On page 8, remove lines 10 through 31 and on page 9, removes lines 1 through 3. This removes Sections 9 and 10 which are the accommodations sections. The concerns about the cake lady and the bathrooms, this would remove the conditions that led to those situations. It keeps the anti-discrimination in tact in terms of hiring and housing. In my understanding with talking to Rep. Beadle, his is similar and does overlaps with what I presented. He says his takes out Section 1 and changes the language by taking out the actual and perceived language. Our amendments kind of overlap.

Rep. Porter: By removing public accommodation when you look on page 1, line 17 it talks about public accommodation in that other section of the code. It talks about discrimination in employment relations, public accommodations, housing, state and local government services. I find it difficult that you could split any one component out of the whole grasp of the entire bill. To me it is an all or nothing concept.

Rep. Fehr: I had the same question and spent some time talking to Troy Seibel of the Labor Commission and based on his feedback to me is that section 1, the 1402.201 policy statement against discrimination; he emphasized that this is a policy statement and not enforceable by law. He made it clear that if we remove the other sections of the public accommodation that even though it is in the policy statement, it wouldn't be something that the Labor Commission would do with.

Rep. Porter: When the State of ND makes a policy statement against or for something then it may take it out of the realm of the agency to enforce, but it makes a nice standing in a civil case. Inside of the public accommodations components of the bill, Mr. Seibel said they wouldn't be necessarily the ones doing anything about that. That would be a civil proceeding. I would still see even having a policy statement would still leave it wide open to the civil courts to decide whether or not it was against the policy of the State of ND in regards to discrimination, by having it back and forth like that.

Rep. Fehr: Rep. Beadle told me he was going to remove section 1 of the bill, but I don't see that, but I see that as a possibility. I don't know if a policy statement if it is there or not makes any difference in the law.

Rep. Porter: It certainly does in court.

Rep. Mooney: When you say take out Section 1, you mean just remove it from the bill.

Rep. Fehr: Correct.

Chairman Weisz: Are you saying if you remove Section 1 that wouldn't be a discriminatory practice?

Rep. Fehr: Are you saying if we remove Section 1?

Chairman Weisz: If you remove Sections 9 and 10 then it is no longer considered a discriminatory practice?

Fehr: There wouldn't be any enforcement of the accommodation component.

Chairman Weisz: How do you reconcile the policy with the law?

Rep. Oversen: Essentially that is a statement of legislative intent. The only time a court is going to do that is if the law is unclear. If we don't include sexual orientation in the law relating to public accommodation and our legislative records shows that we intentionally didn't include it there that is very clear.

Rep. Rich Becker: The word you used of intent, if we leave it in are we setting ourselves up in dealing with this a year or two down the road?

Rep. Oversen: Maybe I didn't make myself clear. In my understanding in looking at legislative intent a court only looks to legislative intent if the law is unclear. Removing sexual orientation from the public accommodation section is pretty clear.

Chairman Weisz: It's true that courts use intent when they are not clear of the law. But, that is part of the problem. We are putting the legislature at odds, not necessarily the court.

Rep. Oversen: I think it is fine to take it out of the policy statement because the law we are adding into housing and employment says that the legislature intended to include it in just housing and employment not in public accommodations. This goes beyond my expertise. I don't want to step out of my bounds.

Chairman Weisz: On Rep. Beadle's amendments on page 3, his language was to say, "gender identity means gender related identity, appearance, mannerisms or other gender related characteristics regardless of the individual". That is also on page 4.

Rep. Porter: I think the language in these two areas is clear without the amendment then with the amendment. I don't think it reads even close to being what I understand it to be.

Chairman Weisz: The rest of the phrase is definitely, you might say perception when it is talking appearances or mannerisms. In some ways I don't know what actual gender identity would mean because that is inherent with the individual and not with the other.

Rep. Oversen: We heard that it was a heterosexual who was perceived to be gay and discriminated against. If we don't include perception, cases like that would not be covered.

Chairman Weisz: That would be related more to the page 4 definition under sexual orientation.

Rep. Oversen: I think there are times when someone's gender identity is also questioned.

Rep. Mooney: Did the Dept. of Labor commissioner speak to the actual perceived and they are accustomed to that type of language in other areas of discrimination?

Chairman Weisz: I don't believe he brought it up.

Rep. Oversen: He said they are equipped to handle that in relation to disability.

Chairman Weisz: He did mention disability. These amendments raise questions so if any of you want to do research we are quitting for the day and will take this up on Monday.

Rep. Seibel: If we take public accommodations out, do we also need to look at page 2, line 20, 26, 29, and 30, page 3, line 2?

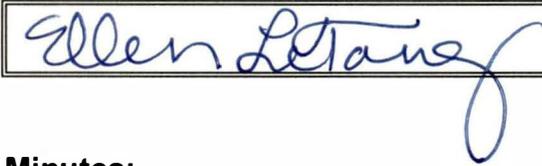
Chairman Weisz: That was part of my question is that we define discriminatory practice and public accommodations are in current law. I would like more answers.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2279
3/31/2015
25633

- Subcommittee
 Conference Committee



Minutes:

Attachment 1

Chairman Weisz: Let's take up 2279.

Representative Mooney: Makes a motion to adopt Representative Boschee's amendment 15.0742.01005. (Attachment 1).

Representative Hofstad: Second.

Representative Fehr: I would like clarification on page 6, the deletions clause?

Representative Mooney: As I recall, Representative Boschee was explaining that he was presenting all of these in context of cleaning it up for a more streamline language?

Representative Oversen: Representative Boschee testimony, they are cleanup in nature related to two sections where the addition of sexual orientation was left out and the religious exemptions to put the language in line with the exemptions allowed at the federal level so our Department of Labor doesn't have investigate any more or less that is required under federal law. It's mirroring after federal law.

Roll call was taken on amendment 15.0742.01005 with 7 yes, 6 no, 0 absent-Motion carried.

Representative Weise: The other proposed amendment that were identical with one exception with the change in actual and perceived. Both amendments delete the public accommodation portions that are currently in the bill.

Representative Mooney: As far as I'm concerned, I really would have a major problem venturing into removing certain aspects from the proposed law and leaving certain aspects. There were all types of complications that arrive and what are the impacts. Two things were playing out simultaneously, as we attempt to fiddle, are we actually accomplishing anything? I concluded that it felt to me like we really weren't concluding anything that would be of great benefit either to the community at large or with the individuals within the state who have to try to enforce and track. This is making it more complicated than it

needs to be. I understand that part of the reasoning for wanting to do that is for an honest attempt at trying to make it more palatable for a broader population of people who are opposed to it. As I further consider that, I begin to wonder if we actually would accomplish that, in doing so, if we don't muddy the waters again even further.

In my world, what I would wish is that we would have the discussion on Senate Bill 2279 as now amended to us and kick it out of here in that form, have it on the floor and have the discussion on whether or not as a state that we can abide by certain forms of discrimination or not abide. Considering everything that we've heard and read in the language, that truly, the "don't ask, don't tell" idealism, is an ugly step that we have taken. I would be in favor of the bill as it is.

Representative Fehr: We do have the labor commissioner here who could address what this would look like if we took out the accommodations section.

Troy Seibel~North Dakota Labor Commissioner: When we look at the Human Right Act, there is employment, public accommodation, public service and credit transactions sections. They are all separate types of cases and causes of action. Should this body choose to have a set of protected categories for employment and a different set of protected categories for public accommodations & services, which is something that the department would enforce. It's possible to do the two sets of protected classes depending on the cause of action that is brought before the department.

Representative Fehr: In section 1, line 17, it has it for public accommodations and there was some discussion as to whether or not we take out the public accommodations sections, what the impact would be by passing the sexual one with sexual orientation given it to say "public accommodations"?

Seibel: When we look at lines 11 through 19 on page 1 of the bill, that's the first of the human rights. We don't use that policy statement. That doesn't give rise to a cause of action. It is a policy statement of the state that this body has made. The causes of action really arise later on in the Human Right Act where the act discusses what discriminatory practices are and types of activities are prohibited. That's what gives rise to somebody to be able to come to department and bring an administrative claim with us. The policy statement, it does not and I don't think that is something in of itself that gives rise to a cause of action. I think it wouldn't necessarily create a cause of action and that's the way our department would interpret it, it's simply a policy statement.

Representative Fehr: You are talking about a cause of action in term of your department. Let me ask you this, if section 1 with the languages in it, you are saying it wouldn't rise to a cause of action with your department? Do you have any comments in terms that they could file a civil law suit?

Seibel: I have to speculate what a court may do or not do with that language. I can only speak to what we would do but my opinion is that the judge would follow on those same lines.

Representative Mooney: On page 3 & 4 and in a couple of other places, it refers to actual perceived gender related identity, how do those words complicate that code?

Seibel: When we look at actual or perceived claims, right now under current law, you can have what is regarded as a disability claim. Somebody can come to us and say, my employer regards me as being disabled even though I am not disabled. I look at the regarded language as being similar to the perceived as language. We do those cases now but I would emphasize the point that it's the charging party's burden. That's the charging party's that has to come into our office and prove that the employer perceived that individual whatever sexual orientation that may be. Perception is typically going to require some other evidence and that burden rests with the charging party to show that the employer perceived the individual as having a certain sexual orientation.

Representative Mooney: I would imagine that the burden of proof must be fairly significant?

Seibel: The burden is essentially more likely than not standard. Sometimes probably cause is used and it's not as high as a criminal or civil standard. Basically it's 50% plus 1, it's more likely than not, that the employer perceived that individual as have a certain sexual orientation. It's going to require something more than the charging party coming to our office and saying "they thought I was gay, so they fired me". They are going to have to bring us either witness statements, emails or whatever the case may be that show that the employer regarded or perceived that individual as being gay.

Representative Weisz: Committee, what are your wishes? Representative Fehr, do you want to offer your amendment?

Representative Fehr: Move the amendment to remove sections 9 & 10.

Representative Oversen: Second.

Representative Weisz: Further discussion?

Representative Mooney: I want to make the point that yes, I will resist the motion and I really do believe strongly by removing this from the discussion and part of the bill concept as a whole, that we are opening up a very slippery slope on legitimate line of questioning of if we are able to remove in one place, why we would remove the others? I just think it doesn't accomplish anything.

Representative Weisz: We will take a roll call.

Roll call was take on the amendment to remove sections 9 & 10 with 2 yes, 11 no, 0 absent, motion failed.

Representative Fehr: Moves a Do Not Pass as Amended.

Representative Rich Becker: Second.

Representative Oversen: I'm disappointed in the direction the committee has gone. If you believe that discrimination is ok or you don't, if it's not ok, we believe people should have protections and recourses in the court of law. Right now as this bill fails, these individuals that we've heard from, we are telling them it's ok that they have been treated that way. I urge you to vote against the Do Not Pass, but I'm not hopeful of that.

Representative Fehr: I strongly disagree with that statement. A vote of Do Not Pass just does not believe that anyone believes in discrimination, it simply says "I'm not ready to vote positively on this particular bill", which is true for the common core and a lot of other bills if you vote on it. The bill in front of you, it's not a public statement in terms of beliefs.

Representative Damschen: I too want to disagree with the statement by Representative Oversen. I certainly do not endorse discrimination against people who are addressing here or anyone else. If we set groups aside, especially when we have ambiguous definitions in this bill, that are probably not going to usually be clarified ever. I think our constitution is adequate and the rights guarantees all of us and voting for the motion but I'm not voting against any person. I strongly disagree with the practice and I'm not endorsing discrimination.

Representative Mooney: My nephew is gay and when he learned we were having this hearing, we spent some time visiting about this. One of the things that he is completely unaware of and most of the younger generations are, many discriminations have taken place throughout our history. When we go back in history and remember some of the egregious acts of discriminations and the justifications for those, its heart breaking. To give Caleb some context what this means to individuals in North Dakota. In Minnesota, he can't be fired because of his sexual orientation and he assumed that that's the truth everywhere. Those basic protections for human rights to me is what this is all about and the fact that the state of North Dakota would be saying, yes we believe in the right of human dignity exactly as our constitution states. Through history, we have had to protect certain populations and is an unsavory reality but it is a reality of our society. I will vote against the motion and stand in favor of SB 2279. I do believe that perception is reality and out there in the world and what the people in North Dakota are hearing this as a negative action and we are not standing with them. As a legislation, we are not prepared to deal with this, it's not going away and it's going to keep coming back in some sort of fashion or another.

Representative Rich Becker: All I want to say at the moment is we each have to have our own personal inner voice that is saying this is right. Is this discrimination or is this special privileges? What has guided me in my decision is my own worry about the moral values slide that our country is in and this is one more piece of it, I have a concern for that. I have friends who are gay, or friends who has children who are gay, I don't see the discrimination. I see things changing ever so slowly but none the less, the overriding factor that I'm hearing from the majority of people, don't continue this slide. Vote against this bill, I personally feel this way, will vote against it and I can look myself in the mirror. All things considered, we have looked at this and I'm not going to change along with anyone else overnight in their views. The pendulum is going too far, too fast and I'm very content to vote against this bill.

Representative Oversen: I want to clarify, my comments were not intended to be offensive or harsh to anyone on this committee because I respect and understand where people are coming from. I know we have young people watching this vote and it means a lot to them to say that we as a state, believe they have protections or not. That's all my statement meant.

Representative Weisz: Further discussion?

Roll call was taken on SB 2279, for a Do Not Pass as Amended with 11 yes, 2 no, 0 absent and Representative Weisz is the carrier.

SL
3/31/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

Page 2, line 13, after "disability" insert ", sexual orientation"

Page 6, line 3, remove "or who adhere to the religion's tenets unless"

Page 6, line 4, remove "membership is restricted because of race, color, or national origin"

Page 6, line 7, remove "or who adhere to the religion's tenets"

Page 11, line 18, after "origin" insert ", sexual orientation"

Renumber accordingly

Date: 3-31-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2279

House Human Services Committee

Subcommittee

Amendment LC# or Description: 15.0742.01005

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Mooney Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson		✓	Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker		✓			
Rep. Damschen		✓			
Rep. Fehr		✓			
Rep. Kiefert		✓			
Rep. Porter	✓				
Rep. Seibel		✓			

Total (Yes) 7 No 6

Absent _____

Floor Assignment 0

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

Date: 3-31-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2279

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Lehr Seconded By Rep. Oversen

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz		✓	Rep. Mooney		✓
Vice-Chair Hofstad		✓	Rep. Muscha		✓
Rep. Bert Anderson		✓	Rep. Oversen		✓
Rep. Dick Anderson		✓			
Rep. Rich S. Becker		✓			
Rep. Damschen		✓			
Rep. Fehr	✓				
Rep. Kiefert		✓			
Rep. Porter	✓				
Rep. Seibel		✓			

Total (Yes) 2 No 11

Absent 0

Floor Assignment Motion Failed

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

Remove Sections 9 and 10

Date: 3-31-15
 Roll Call Vote #: 3

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2279**

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Lehr Seconded By Rep. R. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓	✓	Rep. Mooney		✓
Vice-Chair Hofstad	✓	✓	Rep. Muscha	✓	
Rep. Bert Anderson	✓	✓	Rep. Oversen		✓
Rep. Dick Anderson	✓	✓			
Rep. Rich S. Becker	✓	✓			
Rep. Damschen	✓	✓			
Rep. Fehr	✓	✓			
Rep. Kiefert	✓	✓			
Rep. Porter	✓	✓			
Rep. Seibel	✓	✓			

Total (Yes) 11 No 2

Absent 0

Floor Assignment Rep. Weisz

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

REPORT OF STANDING COMMITTEE

SB 2279: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2279 was placed on the Sixth order on the calendar.

Page 2, line 13, after "disability" insert ", sexual orientation"

Page 6, line 3, remove "or who adhere to the religion's tenets unless"

Page 6, line 4, remove "membership is restricted because of race, color, or national origin"

Page 6, line 7, remove "or who adhere to the religion's tenets"

Page 11, line 18, after "origin" insert ", sexual orientation"

Renumber accordingly

2015 TESTIMONY

SB 2279

1-1



NORTH DAKOTA SENATE

STATE CAPITOL
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COMMITTEES:
Judiciary
Government and Veterans Affairs

SB 2279
2/2/15

In 1953 when I moved to ND from Montana, the Native Americans were finally getting rights from the Federal government. They had been made citizens in order to fight in WWII but did not yet have the vote; that didn't happen until the Indian Civil Rights Act of 1968. In the 1960s when I was newly married, the race card was still being played with the integration of schools and the Civil Rights Act of 1964. Today we still have not provided civil rights for all our citizens. Do you remember the Sunday school song, "Jesus Loves the Little Children"? It says he loves ALL the little children of the world and that includes everyone including people who are lesbian, gay, bisexual, transgender or questioning.

In the drafting of this bill, the Legislative Council admits to an error that was not caught until after the bill was filed. You have a copy of that amendment.

My job is to tell you what the bill does and there are a number of people here today to speak in favor of the bill. I know you have also received a number of emails, both personal and in the form of a form letter. You also have a very personal email from our former senator, Tom Fiebiger, which I hope you will take the time to read. I saw Tom on Saturday and he sends his greetings to members of his former "A" committee.

This bill amends 3 titles in the Century Code. Sections 1-19 deal with the ND Human Rights Act. There are two new definitions, page 3, line 22, "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; and page 4, line 29, "sexual

orientation” means actual or perceived heterosexuality, bisexuality, homosexuality or gender identity. Section 3, page 5, line 27 exempts religious organizations, associations or society or a nonprofit institution or organization under certain circumstances. The remainder of the sections under the Human Rights Act deal with employment agencies, labor organizations, certain employment advertising, employment qualifications, seniority and merit systems, public accommodations, public services, credit transactions, sale or rental of real estate and brokerage services.

Sections 20-24 deal with prohibited practices in insurance and section 25 deals with the jury selection and service act.

Currently there are 21 states and the District of Columbia that have total non-discrimination policies. Add to that over two hundred cities and counties and many Fortune 1000 companies and American 200 law firms that have similar policies. In the past 10 years, major businesses have gone from 13 to 366 with scores of 100 from HRC, many of those companies operate in ND. We need to make the state of ND an accepting state to keep our young people here and encourage others to come. I ask you to read the handouts I have provided and please listen to those here today.

SB 2279
2/2/15

15.0742.01001
Title.

Prepared by the Legislative Council staff for
Senator Nelson

January 20, 2015

#1-3
2-2-15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

Page 2, line 13, after "disability" insert ". sexual orientation"

Page 11, line 18, after "origin" insert ". sexual orientation"

Renumber accordingly

2/2/15

1-4

SB 2279 – Testimony of Tom Fiebiger

Chairman Hogue, members of the Senate Judiciary Committee, my name is Tom Fiebiger, and I submit this testimony today in support of SB 2279. I have testified twice previously on similar legislation involving this important issue.

I wear several different hats. I am a former legislator. I am an attorney who has represented North Dakota citizens in civil rights cases for almost 25 years. I am a member of the ND Human Rights Commission and former member and chair of the Fargo Human Relations Commission. Like many others in North Dakota, I am also the parent of a wonderful, bright and caring son – who just happens to be gay.

What SB 2279 does is extend basic protections in the home and workplace to members of the LGBT community in North Dakota by including sexual orientation to the North Dakota Fair Housing Act and the North Dakota Human Rights Act. The people this legislation is designed to protect from losing their job or being evicted from their homes 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 for legal assistance because they lost their job because they were gay. Sadly, there was nothing I could do to help them. People now no longer call, but not because it's not happening, but because they now know they have no such protections in North Dakota. I find it a sad state of affairs when in 2015

1-5

someone can still be fired from their job or evicted from their home because of who they love if they happen to work on the North Dakota side of the Red River - but are protected if they work on the Minnesota side of the river.

There is a reason almost 90% of the Fortune 500 companies include sexual orientation as a protected class in their company handbooks. They want their business to be successful - and that's accomplished by being invitational to the best and the brightest - no matter what their sexual orientation. Ask Sanford why their personnel policies include such a provision. It's just good business.

Imagine having to worry that if you talk about your personal life at work or have a picture of your partner on your desk at work - something most of us take for granted, you can be fired. That's the reality in 2015 for many of our fellow North Dakotan LGBT citizens without this legislation. This legislation will serve to increase the state's ability to attract, retain and expand its pool of talented workers. We want to encourage our young people to stay in the state and many of them desire inclusive and diverse communities. Passing this bill is not only the right thing to do - it is a big step in the right direction.

The first time I introduced a bill similar to SB 2279 was in the 2009 legislative session. After the bill passed the Senate, I was in a grocery store in Bismarck one evening when a Bismarck State College student approached me with a big grin and his hand outstretched. He was wearing a tuxedo. I learned later he had just finished an orchestra concert that evening. But what struck me was how excited and grateful he was, shaking my hand and thanking me profusely for trying to make it so that people who were gay in North Dakota did not have to worry about getting fired or losing their apartment - just because they were gay. Now, six

SB 2279
2/2/15

years later, I still tear up when I think of that encounter and wonder where that young man and others like him are today. I think of their parents and siblings. Did he stay in North Dakota. . .or leave for a state friendlier to those who happen to be biologically attracted to someone of the same sex? We should all be thinking of these folks, are fellow North Dakotans, today, in 2015, as we discuss this important bill. Life is hard enough without us making it harder.

This legislation should not be a partisan issue. We have support from both sides of the aisle. It is a family and business issue that affects us all. It is about creating inclusive, supportive and diverse communities as our state continues to expand and progress. It is an equal rights issue - a civil rights issue. It was Martin Luther King, Jr. who said the time is always right to do what's right. I urge you as members of the Senate Judiciary Committee to do what's right and give SB 2279 a DO PASS recommendation.

Thank you for your thoughtful consideration of this important legislation.

SB 2279
2/2/15

#1-7

Corporate Equality Index 2015 A New Standard of Equality Emerges from Corporate America

Even after two significant revisions resulting in more stringent criteria, this is the highest number of 100 percent-rated businesses in the entire history of the CEI.

In this 13th edition of the Human Rights Campaign Foundation's Corporate Equality Index, a record 366 businesses achieved a top rating of 100 percent. Even after two significant revisions resulting in more stringent criteria, this is the highest number of 100 percent-rated businesses in the entire history of the CEI.

In the first year of the CEI a decade ago, 13 businesses achieved a top score of 100 percent and in the 2012 CEI, the year of the most recent scorecard updates, just 189 businesses earned top marks.

Highly rated businesses span nearly every industry and major geography of the United States. In addition, more and more businesses are going global with their LGBT initiatives.

This year marks another set of records with regard to comprehensive transgender inclusion initiatives:

- Two-thirds of the Fortune 500 and 89 percent of the entire CEI universe of businesses offer explicit gender identity non-discrimination protections;
- One-third of the Fortune 500 and over half of the CEI universe of businesses offer transgender-inclusive health care coverage, up from 0 in 2002 and nearly ten times as many businesses as five years ago;
- A majority of CEI-rated businesses (eight in ten) offer education and training programs

that specifically include definitions and/or scenarios on gender identity in the workplace; and,

- Hundreds of major businesses have adopted gender transition guidelines for employees and their teams to establish best practices in transgender inclusion.

The policies, benefits and practices businesses must implement to earn a perfect score are best-in-class demonstrations of corporate commitments to LGBT workers and the broader community at-large.

In addition to the depth of investment the top-rated businesses have made in the name of equality, the 2015 CEI shows an unprecedented breadth of brand new businesses. This year's CEI contains an impressive 48 new businesses that opted into the survey.

A grand total of 4,446 major brands fall under rated CEI businesses.

The following report is reflective of primarily verified data submitted to the HRC Foundation as well as independent research on non-responding businesses. Wherever credit can be verified, all ranked businesses will receive it, irrespective of their participation in the CEI survey.

The HRC Foundation has worked with hundreds of businesses to promote workplace equality for LGBT workers.

Fortune 500	2002	2008	2013	2014	2015
Sexual Orientation in Non-Discrimination Policy	61%	88%	88%	91%	89%
Gender Identity in Non-Discrimination Policy	3%	25%	57%	61%	66%

36 2279
2/2/15

#1-8

CEI 2015

This year, a record
366 businesses
achieved a
top rating of
100 percent.

In the first year of
the CEI a decade
ago, 13 businesses
achieved a top score
of 100 percent.

2002	2008	2013	2014	2015	100% by Industry
	30	71	81	89	Law Firms
1	32	33	36	49	Banking and Financial Services
1	13	19	20	26	Retail and Consumer Products
	14	12	16	21	Food, Beverages and Groceries
	10	14	16	20	Insurance
	8	14	17	19	Consulting and Business Services
	9	8	10	12	Healthcare
	7	8	11	12	Hotels, Resorts and Casinos
	3	7	9	11	Manufacturing
	3	7	9	10	Advertising and Marketing
	5	6	9	10	Pharmaceuticals
	1	5	8	9	Computer Software
	3	4	6	9	Entertainment and Electronic Media
4	7	5	6	7	Automotive
	6	5	8	7	Telecommunications
	6	5	6	6	Chemicals and Biotechnology
2	6	4	4	6	Computer Hardware and Office Equipment
	2	4	5	6	Energy and Utilities
1	5	4	4	6	High-Tech/Photo/Science Equip.
		3	4	6	Internet Services and Retailing
1	2	2	2	5	Airlines
	3	4	5	5	Computer and Data Services
	4	2	3	4	Aerospace and Defense
1	8	2	2	2	Apparel, Fashion, Textiles, Dept. Stores
	2		1	2	Real Estate, Commercial
		1	1	1	Home Furnishing
	1		1	1	Mining and Metals
		1	1	1	Oil and Gas
	2	1	1	1	Publishing and Printing
			1	1	Transportation and Travel
		1	1	1	Miscellaneous

SB 2279
2/2/15

SB 2279 Testimony
Representative Joshua A. Boschee, District 44
Senate Judiciary Committee - February 2, 2105

Chairman Hogue and Committee Members,

For the record, my name is Joshua Boschee and I have the privilege of representing District 44, which is comprised of parts of north Fargo.

As Senator Nelson indicated, the bill before you is the same bill that was introduced last session, which amends the ND Human Rights Act and the ND Fair Housing Act to ensure that North Dakotans are protected from discrimination in employment, housing, public services, credit transactions and a number of other forms of everyday personal and professional transactions.

This legislation is important and needed as North Dakota works to recruit and retain a talented workforce and new businesses to our state. My generation no longer looks just for a job to work at, but a community to thrive in and for most of my generation, those communities should provide culture, creativity and great opportunities for community engagement. SB 2279 does this by sending a signal to LGBT North Dakotans that they can be honest about who they are and whom they call family, without the fear of losing their job or housing. Furthermore, it signals to people from all over the country, that North Dakota is open for business and looking for hardworking, talented individuals to keep our economy and communities growing.

In its 2015 Legislative Agenda Value Statements, the Economic Development Association of ND states:

"Quality of place is essential to attracting talent to live and work in communities and in revitalization, diversification, and creation of new wealth."

Their Agenda continues to say:

"North Dakota has unmatched economic opportunity for industry and individuals. The state must support a quality of life that attracts and retains talent to maximize it's growth potential."

The Department of Commerce's ND Economic Development Strategic Plan: 2010-2020 is comprised of the following goals:

Goal 1: Create, attract, and retain quality jobs and workforce targeted industries and high-demand occupations.

Goal 2: Strengthen North Dakota's business climate and image to increase national and global competitiveness.

Goal 3: Enhance North Dakota's image.

The 2014 Update from ND 2020 and Beyond states:

"North Dakota must capitalize on the opportunities that have emerged as a result of our state's impressive economic growth. We must continue to work to create an excellent quality of life for our most important asset, our people. Access to safe communities, exceptional education, quality healthcare and jobs are an important part of the future for

2-2
SB2279
2-2-15

our citizens. We must continue to strengthen our overall business climate to ensure our people continue to have ample opportunities, while still diversifying our economy."

Currently, 89% of Fortune 500 companies provide protections against discrimination based on sexual orientation and 66% based on gender identity. Employers in North Dakota like Wal-Mart, Verizon Wireless, Wells Fargo, Microsoft, Best Buy, Target and US Bank to name a few offer these protections to their employees. In the public sector, the Federal government, including the military and National Guard, along with the ND University System provides protections to LGBT employees; employees that live and work in our state. Employees who are protected while at work, but when they leave the parking lot to head to their apartment or part-time job, those protections only exist in their rearview mirror.

When employees look for a place to work and live, North Dakota has to compete with 21 other states that have nondiscrimination policies already in place including several in our region MN, IA, IL, WI, CO and NM. Passing SB 2279 will open up North Dakota to a number of employers and employees who may have never considered the opportunities our great state provides.

Some of you have expressed concerns that enhancing nondiscrimination policies will provide special rights to one group of people over another. I disagree with this sentiment. Enhancing nondiscrimination policies recognizes that in our society, certain people become targets and are more likely to be treated unfairly than others. The opportunity for this type of treatment is detrimental for our families, our communities, and our state. Our state and our nation have a history of overcoming these forms of discrimination. At one point in our nation's short history discrimination occurred based on sex, race, and religion. Many times it took courage for elected leaders to say "No More" to protect groups that have historically been discriminated against. Now it is North Dakota's turn to ensure that our family members, friends, co-workers and neighbors are judged by the content of their character, not whom they love or call family.

As elected leaders, we cannot bury our heads in the sand and continue to be naïve that discrimination against lesbian, gay, bisexual and transgender North Dakotans does not occur. While we all know that the majority of businesses and landlords in our state do not discriminate; you will shortly hear from opposition to this legislation that it is in fact, their right to discriminate in whom they hire, rent to, or even provide service to in facilitating commerce.

Since the Department of Labor does not collect data on individuals who request assistance, that are not covered under their obligations, we don't the number of North Dakotans that have experienced workplace or housing discrimination. However, I can share anecdotally that I personally know of three to four individuals a year that feel they have been discriminated based on their sexual orientation or gender identity. These individuals include college students working part time at a convenience store to a nurse practitioner looking for an apartment with her partner, as they considered moving to Fargo to work for one our healthcare providers.

Passing SB 2279 tells the employers and landlords who wish to discriminate based on who someone is, that North Dakota is home to a variety of people and as long as they are doing their job and paying their rent on time, discrimination based on sexual orientation and gender identity is wrong and illegal. Passing SB 2279 is a statement to LGBT North Dakotans, their families

2-3
SB 2279
2-2-15

and those North Dakotans that oppose discrimination in any form, that we value our family, friends, neighbors, co-workers and those we worship with, and we value all that they contribute to our great state.

In fact, the majority of North Dakotans agree, that discrimination is not a North Dakota value. Included in my testimony are the results of a phone survey conducted last week by DFM Research of 400 North Dakota residents over the age of 18. You will find that:

- 59% of North Dakotans support SB 2279, including
- 68% of east city residents and 62% of west city residents
- 61% of east rural residents
- 63% of self-identified independents and
- 65% of self-identified moderates

It is clear that North Dakotans value hard work and talent. They do not value discrimination, which is why if a North Dakotan is discriminated against, they should be able to work with the Department of Labor to rectify the situation.

Chairman Hogue and committee members, I ask for a DO PASS recommendation on SB 2279 so that our LGBT family members, friends and constituents can live free from the fear of discrimination in North Dakota.

#2-4
SB2279
2-2-15

Interviews: 400 residents over the age 18 that reside in North Dakota

Margin of Error: +4.9 percentage points

Interview Dates: January 26- 31, 2015

Sample: Landline and cell phone sample. Random digit numbers provided by Survey Sample International (SSI) of Fairfield, CT. SSI provided Stone Research with 4,000 residential random phone numbers from a pool of listed and unlisted numbers in the boundary area, and 1,700 cell phone numbers; which then were stratified into five distinct regions.

Survey Sponsor: Friends of Joshua Boschee

Q: North Dakota prohibits discrimination on the basis of race, color, religion, sex, age, but not on the basis of sexual orientation. Some in the legislature want to change that, and have introduced Senate Bill 2279 which would also prohibit discrimination on the basis of sexual orientation. Suppose you had a vote on Senate Bill 2279, would you vote YES to pass the bill, or NO to reject the Bill?

Yes, to pass 59%
 No, to reject 31
 (VOL) Unsure 10

<u>Gender</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
Men	58%	33	9	+25
Women	59	30	11	+29
<u>Age</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
18-39	60	30	10	+30
40-64	56	36	9	+20
65 plus	60	26	14	+34
<u>Education</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
High School/Less	58	28	14	+30
Some College/AA Degree	54	37	9	+17
Bachelor/Graduate Degree	66	28	6	+38
<u>Region</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
East City	68	26	6	+42
West City	62	27	10	+35
East Rural	61	33	7	+28
Central Rural	49	37	14	+12
West Rural	49	36	15	+13
<u>Party Identification</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
Democrat	73	18	9	+55
Independent	63	30	8	+33
Republican	45	41	13	+ 4
<u>Ideology</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
Liberal	71	19	10	+52
Moderate	65	26	9	+39
Conservative	49	40	11	+ 9
Tea Party (Favorable)	38	53	10	-15

Good morning committee members and thank you for this opportunity to offer my testimony. My name is Jared Kellerman and I'm here in support of SB 2279. Before I explain why I support this bill I need to tell you a little bit about myself and how I came to stand before you today.

I grew up on a beef and grain farm outside of Sheldon, ND. I had the privilege of helping my parents corral beef cattle, do night watches during calving season, and run the grain cart during fall harvest. I maybe didn't see working on the farm as a privilege in my youth, but I know in hindsight that these experiences taught me to value my work and to put myself into an effort wholeheartedly in order to see a return. Undoubtedly, this work ethic drove me to do my best in school where I came pretty close to getting 4.0's in high school and college. But one thing that tainted this experience was the constant fear that I might be gay!

Growing up in a small town, my only exposure to the words lesbian or gay - to say nothing of bisexual or transgender - were through hallway gossip and locker room slurs. It wasn't uncommon to hear boys in my school say "don't be queer" and for boys and girls to ask, "you don't have girlfriend? what are you gay?" Growing up in that environment, I didn't really know what gay meant except that I would be bullied or socially ostracized if I were labeled as gay. As a Lutheran that taught Sunday-school, I enjoyed talking about the love God had for us but couldn't help but wonder if God was waiting to judge me for having same-sex attractions according to my churches lack of conversation on the topic. This fear of being labeled gay continued from high school to college; it led to a hyper-vigilant self-consciousness and clinically significant levels of depression and anxiety. Although I was doing well academically, I struggled to make genuine connections with people, couldn't sleep well, and always exerted a lot of effort just to be in public (all hallmarks of mental illness). My parents, knowing I was suffering but not knowing where to go, supported my choice financially to try conversion therapy. I went to a couple of sessions hoping that there was some technique I had overlooked that would take my same sex attractions away and that I might be "normal." It wasn't until my last year of college that I recognized the connection between my years of fearing being gay to my mental health problems; that's when I decided that I needed to tell myself that I was gay and that that was okay. I wasn't going to survive, otherwise.

Although I was able to come out to myself, I still didn't feel like I was welcome in ND because no one was talking about LGBT North Dakotans. I had tried so hard for so long to fit in that I decided to give myself a break by living abroad for a year in South Korea teaching English. It was a privilege to live abroad because I met so many diverse people and felt like it was safe for me to publicly share that I was gay; people were more shocked by the fact that I was North Dakotan more so than I was gay...they had never seen one of us before. Living in this environment, I found the support and affirmation I needed to integrate all of the parts of my identity. As a result, my mental health improved, my self confidence went up, and I was and am happy with who I am.

SB 2279
2/2/15

#3-2

It is for these struggles that I have just shared with you that I support SB 2279. I suffered in silence for a long time because no one in my hometown or my academic career was talking about LGBT identities in a positive way if at all. I left ND once because I felt like no one wanted me here and I wanted to survive. In the next year, I will graduate with a master's in couple and family therapy and will be ready to join the workforce. Having this bill supported today would tell me and every other LGBT North Dakotan that we're wanted here, that our efforts matter, and that we will have the same rights and responsibilities as every straight North Dakotan does.

I've heard in conversation that some people doubt that LGBT discrimination is a problem because no one is speaking up. Although I'm speaking up in front of you today, not everyone that is LGBT in North Dakota feels like they have a voice or are not willing to raise their concerns at work or in their housing because they have more to lose by talking than by remaining silent. I have talked to you today about the damage that silence can cause; it compromises your well-being and your ability to fully do your work. If you doubt that this is a struggle for North Dakotans, I warmly invite you to Fargo to the Pride Collective & Community Center to hear the stories of LGBT community members and their struggles. I hope today that you will break the damaging silence we as LGBT North Dakotans have had to live with by supporting this bill.

SB 2279
2/2/15



LEGAL MEMORANDUM

DATE:

February 2, 2015

RE:

Legal Analysis of Senate Bill 2279

Introduction

Enacting North Dakota Senate Bill 2279 (“SB 2279”)—the proposed legislation to expand North Dakota’s nondiscrimination laws to include the categories of “sexual orientation” and “gender identity”—will threaten North Dakotans’ First Amendment freedoms and expose the State to legal and fiscal liability.¹ Herein, we examine some of the legal concerns posed by SB 2279, should it be enacted:

- I. SB 2279 will violate constitutional rights by requiring North Dakotans to participate in events, or produce messages, with which they disagree.
 - II. SB 2279 threatens child-welfare providers, and those they serve.
 - III. SB 2279 will require schools, businesses, gyms, and other locations to make their restrooms, locker rooms, and shower rooms gender neutral. This will violate North Dakotans’ constitutional right to privacy and place these organizations and businesses at risk of lawsuits.
- I. SB 2279 will violate constitutional rights by requiring North Dakotans to participate in events, or produce messages, with which they disagree.**

Both the United States and North Dakota Constitutions protect freedom of expression from government coercion.² The constitutional right to free speech “includes both the right to speak freely and the right to refrain from speaking.”³ A long line of U.S. Supreme Court precedent establishes that the government cannot force citizens or organizations to convey messages that they deem objectionable; nor may it punish them for declining to convey such messages.⁴

¹ SB 2279 defines “sexual orientation” to include “gender identity”: “‘Sexual orientation’ means actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity.” SB 2279, § 14-02.4-02, 20, 64th Leg. Assem., Reg. Sess. (N.D. 2015). “Gender identity” is defined as “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.” SB 2279, § 14-02.4-02, 10, 64th Leg. Assem., Reg. Sess. (N.D. 2015).

² See U.S. CONST. amend. I; N.D. CONST. art. I, § 4.

³ *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

⁴ See, e.g., *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 572-73 (1995) (government may not require a public-accommodation parade organization to facilitate the message of a gay-advocacy group); *Pacific Gas and Elec. Co. v. Public Utils. Comm’n of Cal.*, 475 U.S. 1, 20-21 (1986) (plurality) (government may not require a business

#4A2



But if SB 2279 is enacted, it will violate North Dakotans' constitutionally protected freedoms of speech and conscience by coercing individuals to participate in events or facilitate messages with which they disagree. This proposed legislation could also subject the State to lawsuits for which the State may be liable for attorneys' fees.

For example, the vast majority of businesses and organizations, including those owned by people of faith, prioritize treating all people with dignity and respect, including those who identify as gay, lesbian, or transgender. Indeed, research was unable to identify a substantiated, or even alleged, pattern and practice of sexual-orientation or gender-identity discrimination in North Dakota. But some business owners, because of their religious or moral beliefs, are unable to facilitate or participate in certain expressive events, such as same-sex ceremonies. Similarly, some business owners are unable to create messages that are contrary to what their faith commands. Because SB 2279 lacks protections for rights of conscience, the enactment of SB 2279 will allow the government to discriminate against good North Dakotan citizens who are simply trying to run their businesses consistent with their faith or mission. The adoption of SB 2279 thus will present these individuals and businesses with an intolerable choice: violate their conscience or face legal action, including fees, and possible termination of employment.⁵ Moreover, SB 2279 will stifle the diversity, choice, and freedom that are essential to flourishing communities and economic growth.

Legal action taken against business owners simply trying to live and work according to their conscience is not mere speculation. On the contrary, measures similar to SB 2279 enacted in other jurisdictions have resulted in government coercion and legal action taken against individuals and businesses that declined to express a message, or participate in, support, or host an event inconsistent with their deeply held religious beliefs. Some examples include:

- Barronelle Stutzman, the 70-year-old owner of Arlene's Flowers in Richland, Washington, has served and employed people, including those who identify as gay and lesbian, for her entire 40-year career. But in 2013, both the Washington State Attorney General and a same-sex couple sued Barronelle in her personal and business capacities pursuant to a law similar to SB 2279.⁶

to include a third party's expression in its billing envelope); *Wooley*, 430 U.S. at 717 (government may not require citizens to display state motto on license plates); *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (government may not require a newspaper to include a third party's writings in its editorial page).

⁵ See N.D. CENT. CODE § 14-02.4-20. "If the department, as the result of an administrative hearing, or the court determines that the respondent has engaged in or is engaging in a discriminatory practice, the department or the court may enjoin the respondent from engaging in the unlawful practice and order temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date a minimally sufficient complaint was filed with the department or the court."

⁶ For more information about Barronelle Stutzman and Arlene's Flowers, including links to relevant legal documents, see the Alliance Defending Freedom media page, available at <http://www.alliancealert.org/tag/zz-state-of-washington-v-arlenes-flowers/> (last visited Jan. 31, 2015). The complaints against Barronelle are available at <http://www.adfmedia.org/files/ArlenesFlowersAGcomplaint.pdf> (last visited Jan. 31, 2015) and <http://www.adfmedia.org/files/ArlenesFlowersACLUcomplaint.pdf> (last visited Jan. 31, 2015). A short video featuring Barronelle telling her story is available at <http://www.youtube.com/watch?v=MDETkcCw63c> (last visited Jan. 31, 2015).

SB2279

2/2/15



These legal actions resulted when Barronelle referred one of the gentlemen, a long-time customer and friend, to a different florist because she could not create floral arrangements and provide full wedding support for his same-sex ceremony. Barronelle believes that marriage is a sacred relationship of a man and a woman, created by God. Even though Barronelle had provided this same-sex couple flowers for birthdays, anniversaries, Valentine’s Day, house warming parties, and many other events for nine years—and even though multiple other florists were eager to provide flowers for the couple’s wedding for free—both the state and the couple are seeking to compel Barronelle to either adopt their view of marriage and violate her faith or lose everything she owns.

- Donald and Evelyn Knapp are two ministers who own the Hitching Post Wedding Chapel. Late last year, pursuant to its local nondiscrimination law, the City of Coeur D’alene, Idaho tried to force the Knapps to perform a same-sex ceremony, even though doing so would violate their religious convictions.⁷ The City subsequently confirmed that it had not made a mistake: the wedding chapel was subject to the nondiscrimination ordinance similar to SB 2279.⁸ Alliance Defending Freedom attorneys have a filed a lawsuit on the Knapps’ behalf, challenging the constitutionality of the nondiscrimination law as applied to them.⁹
- In Lexington, Kentucky, an ordinance similar to SB 2279 is currently being used to prosecute Blaine Adamson, the owner of a printing company, Hands On Originals. Blaine has employees who identify as gay, and he has always served everyone regardless of sexual orientation. As is the case with most printing companies, Blaine must sometimes decline certain requests to print shirts because the messages he is asked to print violate his conscience. However, when he referred a request to print messages on shirts promoting a local “Gay Pride” festival because it would violate his religious convictions to print and convey a message promoting the event, the group hosting the festival filed a complaint against Hands On Originals, alleging sexual-orientation discrimination. And even though the representative of the festival found another printing shop that produced the requested shirts for free, Blaine’s case remains in litigation as the government seeks to coerce him to run his business according to its particular ideology, instead of protecting Blaine’s freedom to run his business according to his conscience.¹⁰
- A Georgia woman filed a discrimination complaint against a licensed counselor, who, because of her deeply held religious beliefs about same-sex relationships, respectfully declined to provide counseling about her same-sex relationship. The counselor referred the prospective client to a colleague, who, within minutes, provided the client with the help she sought. The counselor was nonetheless terminated from her employment.¹¹

⁷ Alliance Defending Freedom, “Govt tells Christian ministers: Perform same-sex weddings or face jail, fines,” October 18, 2014, available at <http://www.adfmedia.org/News/PRDetail/9364> (last visited Jan. 31, 2015).

⁸ Alliance Defending Freedom, “City of Coeur d’Alene confirms for-profit wedding chapel violates ordinance,” October 21, 2014, available at <http://www.adfmedia.org/News/PRDetail/9366> (last visited Jan. 31, 2015).

⁹ *Id.*

¹⁰ For more information about Blaine Adamson and Hands On Originals, including links to relevant legal documents, see *ADF: Ky. T-shirt company not required to promote message it disagrees with*, April 20, 2012, available at <http://www.adfmedia.org/News/PRDetail/5454> (last visited Jan. 21, 2015).

¹¹ *Walden v. Centers for Disease Control and Prevention*, Case No. 1:08-CV-2278-JEC-WEJ, Magistrate Judge’s Final Report and Recommendation, Doc. No. 111, at 16; 19-22; and 40-41 (N.D. Ga. Nov. 20, 2009).

SB 2279

2/2/15



These individual and businesses, and others like them—who cannot discard their religious beliefs at the door when they operate their businesses or carry out their professions—should not be forced to choose between their conscience and their livelihood. SB 2279’s failure to exhibit tolerance imperils the constitutionally-protected religious liberty of North Dakotans and needlessly drains North Dakota of business, revenue, tax dollars, and employment opportunities.¹²

II. SB 2279 threatens child-welfare providers, and those they serve.

Evidence from other jurisdictions that have passed measures similar to SB 2279 reveals that these laws lead to government discrimination against certain individuals and organizations engaged in the provision of child welfare services. There are frequent examples of government entities refusing to contract with individuals and organizations that conduct themselves in accordance with their religious beliefs because of the government entities’ adherence to nondiscrimination laws.

Unfortunate victims of this discrimination—in addition to the children, birth mothers, and adoptive families they serve—include the faith-based child-welfare agencies that, for religious reasons, strive to place children in homes with both a mother and a father. Indeed, statutes like the proposed law have forced charitable adoption organizations to close because they could not continue to adhere to their religious convictions.¹³ Regrettably, this type of unnecessary discrimination has already occurred in Illinois, Massachusetts, and the District of Columbia.¹⁴

¹² Michael W. McConnell, *The Problem of Singling Out Religion*, 50 DePaul L. Rev. 1, 43-44 (2000) (noting that legal issues involving sexual orientation “feature a seemingly irreconcilable clash between those who believe that homosexual conduct is immoral and those who believe that it is a natural and morally unobjectionable manifestation of human sexuality”).

¹³ See, e.g., Father Robert J. Carr, *Boston’s Catholic Charities to stop adoption service over same-sex law*, Catholic Online, available at http://www.catholic.org/printer_friendly.php?id=19017§ion=Cathcom (last visited Jan. 31, 2015) (“Catholic Charities in Boston announced March 10 that it is getting out of the adoption business.”).

¹⁴ See, e.g., Laurie Goodstein, *Illinois Catholic Charities close over adoption rule*, The Boston Globe, available at <http://www.bostonglobe.com/news/nation/2011/12/29/illinois-catholic-charities-close-rather-than-allow-same-sex-couples-adopt-children/Km9RBLkpKzABNLJbUGhvJM/story.html> (last visited Jan. 31, 2015) (“[M]ost of the Catholic Charities affiliates in Illinois are closing down rather than comply with a new requirement that says they can no longer receive state money if they turn away same-sex couples as potential foster care and adoptive parents.”); Father Robert J. Carr, *Boston’s Catholic Charities to stop adoption service over same-sex law*, Catholic Online, available at http://www.catholic.org/printer_friendly.php?id=19017§ion=Cathcom (last visited Jan. 31, 2015) (“Catholic Charities in Boston announced March 10 that it is getting out of the adoption business, over Massachusetts state law requiring that that the agency place children with same-sex couples.”); Julia Duin, *Catholics end D.C. foster-care program*, Washington Times, available at <http://www.washingtontimes.com/news/2010/feb/18/dc-gay-marriage-law-archdiocese-end-foster-care/> (last visited Jan. 31, 2015) (“The Archdiocese of Washington’s decision to drop its foster care program is the first casualty of the District of Columbia’s . . . same-sex marriage law.”).



III. SB 2279 will require public restrooms, locker rooms, and shower rooms to be gender neutral rather than gender specific.

Federal law governing throughout the country currently forbids discrimination on the basis of sex.¹⁵ Sex is determined by a person’s biology and anatomy;¹⁶ it is an objectively verifiable characteristic that is familiar throughout the legal system. Indeed, traditional legal classifications of sex, as well as race and nationality, are innate, immutable characteristics that cannot be naturally changed. SB 2279, however, seeks to supplement the existing legal regime with the novel legal concept of “gender identity.”

“Gender identity,” unlike sex, is determined by a person’s “perceived...identity, appearance, or mannerisms...regardless of the individual’s designated gender at birth”; it is thus an internally conceived and objectively unverifiable characteristic with no firm legal foundation.¹⁷ Placing “gender identity” in the law, as the proposed bill attempts to do, creates an unworkable legal construct based on an individual’s subjective perception.¹⁸ Simply put, it will radically change the law’s—and, in turn, society’s—view of maleness and femaleness by transforming a person’s legal status as male or female based on a reality determined by biology to a status rooted in a preference determined by internal reflection. North Dakota’s proposed addition of “gender identity” could create several issues for the state.¹⁹

First, the nondiscrimination statutes make it discriminatory for a person²⁰ “to fail to provide to a person access to the use of any benefit from the . . . facilities of the public accommodations.”²¹ If SB 2279 is enacted, thereby adding “gender identity” to the list of protected characteristics under this section, businesses, schools, and fitness centers are just some of the “public accommodations” that will be legally forced to allow biological males who identify as females to use the women’s restrooms,

¹⁵ 42 U.S.C. § 2000e-2 (“It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex”).

¹⁶ Shuvo Ghosh, *Sexuality, Gender Identity*, eMedicine, available at <http://emedicine.medscape.com/article/917990-overview> (last visited Jan. 31, 2015) (“Sex . . . is defined by the gonads, or potential gonads, either phenotypically or genotypically. It is generally assigned at birth by external genital appearance, due to the common assumption that this represents chromosomal or internal anatomic status.”).

¹⁷ See § 14-02.4-02, 10, 64th Leg. Assem., Reg. Sess (N.D. 2015). See also Shuvo Ghosh, *Sexuality, Gender Identity*, eMedicine, available at <http://emedicine.medscape.com/article/917990-overview> (last visited Jan. 31, 2015).

¹⁸ Taylor Flynn, *Transforming the Debate: Why We Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality*, 101 COLUM. L. REV. 392, 395-96 (2001) (noting that one goal of this recent push for the law to embrace the concept of gender identity is to “encourag[e] courts and society to conclude that the determination of one’s sex should rest with the individual and not the state”).

¹⁹ The bill defines “sexual orientation” to include “gender identity,” so prohibiting discrimination based on “sexual orientation” also includes discrimination based on “gender identity.” See § 14-02.4-02, 20, 64th Leg. Assem., Reg. Sess (N.D. 2015).

²⁰ “Person” includes both natural born persons and corporate persons. See N.D. Code § 1-01-49.

²¹ N.D. Code § 14-02.4-16. A *public accommodation* is defined by the Code as “every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.” N.D. Code § 14-02.4-16. *Facilities*, while not defined, is generally understood to include restrooms, shower rooms, and locker rooms.

SB 2279

2/2/15

4A6



locker rooms, and shower rooms; and likewise allow biological females who identify as males to use the men's restrooms, shower rooms, and locker rooms. A business or school, for example, which attempts to protect the safety and privacy concerns of its employees or students by refusing to make these facilities gender neutral could face legal action for violating the law.

Second, allowing biological males into the restrooms, shower rooms, or locker rooms used by biological females may violate constitutional privacy rights. The Ninth Circuit Court of Appeals has noted that “[w]e cannot conceive of a more basic subject of privacy than the naked body. The desire to shield one’s unclothed figure from . . . strangers of the opposite sex[] is impelled by elementary self-respect and personal dignity.”²² The Tenth Circuit Court of Appeals has similarly explained that a person’s constitutional right to privacy is violated where a government policy or conduct allows a member of the opposite sex to view him or her while “engag[ing] in personal activities, such as undressing, using toilet facilities, or showering.”²³ Thus, SB 2279, if enacted, may violate the dignity and constitutional privacy interests of citizens who will be forced to share a restroom, shower room, or locker room with a person of the opposite biological sex. Indeed, this broad scope will impact most of the organizations throughout North Dakota. Consider the following examples of the potential impact of such a law:

- Organizations must allow persons to access sex-segregated programs, activities, and facilities in accordance with the sex they choose.²⁴ This means, for example, that a school must allow a biological male who professes a female identity to attend an all-girls school or participate in an all-girls class or athletic program.
- Organizations must allow persons to access bathrooms, showers, and locker-room facilities in accordance with the sex they choose.²⁵ Notably, it has not been sufficient in some jurisdictions for organizations to create a private “family” or “unisex” bathroom for use by such individuals. The Maine Human Rights Commission thus ruled that a middle school engaged in “gender identity” discrimination against a biologically male sixth-grade student who professed a female identity because the school provided the student with his own private bathroom and locker room instead of allowing him to use the female restroom.²⁶

²² *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963).

²³ *Cumbey v. Meachum*, 684 F.2d 712, 714 (10th Cir. 1982). See also *Lee v. Downs*, 641 F.2d 1117, 1119-20 (4th Cir. 1981) (noting that men are “entitled to judicial protection of their right of privacy denied by the presence of female[s] . . . in positions to observe the men while undressed or using toilets”).

²⁴ Maine Human Rights Commission, *Sexual Orientation in Schools and Colleges: Know Your Rights and Responsibilities*, available at http://www.foxnews.com/projects/pdf/2-08-2010_Draft_MHRC_Sexual_Orientation_Guidance.pdf (last visited Jan. 31, 2015) (“In general, students . . . must be allowed access to gender-segregated programs, activities, and facilities in accordance with their gender identity . . . , and they must be addressed by their chosen names and pronouns.”).

²⁵ Maine Human Rights Commission, *Sexual Orientation in Schools and Colleges: Know Your Rights and Responsibilities*, available at http://www.foxnews.com/projects/pdf/2-08-2010_Draft_MHRC_Sexual_Orientation_Guidance.pdf (last visited Jan. 31, 2015) (“[S]tudents must be allowed access to the bathrooms that correspond with their gender identity”).

²⁶ Heather Steeves, *Panel rules against Orono school in transgender bathroom access*, Bangor Daily News, Sept. 20, 2010, available at <http://www.bangordailynews.com/external/mobile/?id=154263> (last visited Jan. 31, 2015); *Human Rights Panel Rules Against Orono School in Transgender Bathroom Issue*, Maine Public Broadcasting Network, Sept. 21, 2010, available at <http://www.mpbn.net/Home/tabid/36/ctl/ViewItem/mid/3478/ItemId/13583/Default.aspx> (last visited Jan. 31, 2015); *Panel: School Discriminated Against Transgender 6th Grader by Not Letting Student Use Girls' Room*, Fox News,

SB 2299

2/2/15



- Schools must allow students to participate in sex-segregated sports in accordance with the sex they choose.²⁷ This requires schools to allow, for instance, a biological female to play on the boy's football team, or a biological male to join the girls' basketball team.
- Employers, schools, and other organizations must allow employees, students, and patrons to dress in accordance with the sex they choose. This means that employers will no longer be allowed to maintain a reasonable dress code,²⁸ which they are currently able to do under federal law.²⁹ It also means that schools must allow biological males who profess a female identity to wear dresses, skirts, and earrings to class and other school functions.³⁰
- Publicly accessible organizations and entities that maintain separate lodging facilities for men and women—such as homeless shelters or drug-and-alcohol-rehabilitation centers—must allow persons to lodge with the residents who share the sex that they choose.³¹ This means that a women's homeless shelter, for example, must allow a biological male who professes a female identity to sleep in the women's facilities.

Third, laws allowing biological males to use facilities designated for women may be used by heterosexual sexual predators to gain easier access to women, teens, and girls. Sadly, this has happened in other communities that have enacted laws prohibiting discrimination on the basis of gender identity.³² Businesses will no longer be able to protect the dignity and safety of their female

Sept. 22, 2010, available at <http://www.foxnews.com/us/2010/09/22/panel-school-discriminated-transgender-th-grader-letting-student-use-girls-room/> (last visited Jan. 31, 2015).

²⁷ Maine Human Rights Commission, *Sexual Orientation in Schools and Colleges: Know Your Rights and Responsibilities*, available at http://www.foxnews.com/projects/pdf/2-08-2010_Draft_MHRC_Sexual_Orientation_Guidance.pdf (last visited Jan. 31, 2015) (“[S]tudents must be permitted to participate in gender-segregated sports in accordance with their gender identity”).

²⁸ *The Employment Non-Discrimination Act of 2007: Hearing on H.R. 2015 Hearing Before the Subcomm. on Health, Employment, Labor and Pensions, H. Comm. on Education and Labor*, 110th Cong. 38 (2007) (statement of Lawrence Z. Lorber, partner, Proskauer Rose, LLP, an attorney with more than 30 years of experience with labor and employment law), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:37637.pdf (last visited Jan. 31, 2015) (opposing a federal “gender identity” nondiscrimination law and noting that “[i]t is simply unclear how a reasonable dress code can coexist with the . . . indefinite classification of self-perceived gender identity”).

²⁹ *Jepperson v. Harrah's Operating Company, Inc.*, 444 F.3d 1104 (9th Cir. 2006) (en banc) (upholding a sex-specific dress code and grooming policy); *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385 (11th Cir. 1998) (similar); *Tavora v. New York Mercantile Exchange*, 101 F.3d 907 (2d Cir. 1996) (similar); *Carroll v. Talman Federal Savings & Loan Assoc.*, 604 F.2d 1028 (7th Cir. 1980) (similar); *Willingham v. Macon Telegraph Publ'g Co.*, 507 F.2d 1084 (5th Cir. 1975) (similar); *Dodge v. Giant Food, Inc.*, 488 F.2d 1333 (D.C. Cir. 1973) (similar); *Baker v. California Land Title Co.*, 507 F.2d 895 (9th Cir. 1974) (similar); *Knott v. Missouri Pacific Ry. Co.*, 527 F.2d 1249 (8th Cir. 1975) (similar); *Barker v. Taft Broad Co.*, 549 F.2d 400 (6th Cir. 1977) (similar); *Earwood v. Continental Southeastern Lines, Inc.*, 539 F.2d 1349 (4th Cir. 1976) (similar).

³⁰ Maine Human Rights Commission, *Sexual Orientation in Schools and Colleges: Know Your Rights and Responsibilities*, available at http://www.foxnews.com/projects/pdf/2-08-2010_Draft_MHRC_Sexual_Orientation_Guidance.pdf (last visited Jan. 31, 2015) (“[S]tudents must be permitted to dress in accordance with their gender identity”).

³¹ National Gay and Lesbian Task Force Policy Institute & National Coalition for the Homeless, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People* 31-33, 37-38 (2003), available at <http://www.thetaskforce.org/downloads/reports/reports/TransitioningOurShelters.pdf> (last visited Jan. 31, 2015) (noting that “[a] men's shelter is [not] . . . appropriate for a [biological male who professes a female identity]”).

³² See, e.g., Robert J. Lopez, *Man wore dress, wig to videotape women in bathroom, deputies say*, Los Angeles Times, May 14, 2013, available at <http://articles.latimes.com/2013/may/14/local/la-me-ln-man-videotape-women-in-restroom->

SB 2279



patrons by preventing these predators from entering the women's facilities. Instead, they will have to allow all biological males who assert that they identify as female access to rooms previously reserved for biological females. This jeopardizes the safety and privacy of women, teens, and young girls because it disregards the rights, interests, and dignity of the unsuspecting citizens who are exposed to the individuals that profess a sex contrary to their biological reality.

If SB 2279 is enacted, businesses, schools, and other public accommodations will be given the untenable choice of complying with the law or seeking to protect the safety, dignity, and privacy of their patrons. They will not be able to do both. This places these organizations in a no-win situation.

Conclusion

SB 2279 presents many constitutional and statutory concerns. The experiences of other jurisdictions demonstrate the legal challenges associated with such laws. If enacted in North Dakota, it will likely have many adverse consequences, including trampling every North Dakotan's fundamental freedoms.

20130514 (last visited Jan. 31, 2015); Sam Pazzano, *Predator who claimed to be transgender declared dangerous offender*, Toronto Sun, February 26, 2014, available at <http://www.torontosun.com/2014/02/26/predator-who-claimed-to-be-transgender-declared-dangerous-offender> (Jan. 31, 2015).

4-1
2/2/15

Chairman and Senate Judiciary Committee members: For the record my name is Derek LaBrie and I am the Government Affairs Commissioner at the University of North Dakota. Today, I came to speak in support of Senate Bill 2279. As the North Dakota Century Code currently reads, there are no protections against any discrimination on account of sexual orientation. This is a scary thought for many people across the state. At the University of North Dakota, the Student Senate passed the attached resolution in support of this bill yesterday. We have supported similar measures in the past at the city and state level. There is a need, as exhibited by the fact that UND Student Government members have continued to bring up this issue over the past two sessions. But it's not just Student Government members who are concerned. Members of the student body have contacted us, worried that discrimination can still legally happen in this state. This bill is unique in several ways. First of all, most of the bills that students bring up and we later come here to voice our support or opposition, deal directly with students. This bill, however, deals with people of all ages, not just students. Secondly, it is long overdue. Under the Fourteenth Amendment to the United Constitution, no person shall be denied "equal protection of the laws," which has been in effect since 1868. UND believes it is the time to act. Finally, most objections to similar laws derive from the religious organization, association, and society realms. This bill includes exceptions for these circumstances. To conclude, the University of North Dakota Student Government and I full urge you and your colleagues to pass Senate Bill 2279. Thank you for your time.

Senate Resolution

To: The Student Senate of the University of North Dakota

Authors: Derek LaBrie—Government Affairs Commissioner

Sponsors: Taylor Nelson—On Campus Apartments Senator

CC: Tanner Franklin - Student Body President, Brett Johnson - Student Body Vice President, Cassie Gerhardt - Student Government Advisor, Andrew Frelich – Student Organization Funding Agency Advisor; Dr. Lori Reesor – Vice President for Student Affairs, Cara Halgren – Associate Vice President for Student Services & Dean of Students

Date: February 1st, 2015

Re: Support for North Dakota Senate Bill 2279

2 Whereas, on February 3, 2013 University of North Dakota Student Senate passed SR 1213-15 which
 4 supported North Dakota Senate Bill 2252, a non-discrimination clause to include protection regardless
 of sexual orientation, and

6 Whereas, on October 13, 2013 University of North Dakota Student Senate passed SR 1314-05 which
 supported the Non-Discrimination Housing Ordinance Amendment to the Grand Forks City Code, and

8 Whereas, in the Community Values Statement passed by the University Senate in 1966, the University
 is intended to foster “an environment where all faculty, staff, and students deserve to be treated with
 dignity and respect,” and

10 Whereas, the North Dakota State Senate will be discussing Senate Bill 2279, and

12 Whereas, North Dakota Senate Bill 2279 amends sections of the North Dakota Century Code to
 include prohibitions of discrimination based on sexual orientation, and

14 Therefore, be it resolved that the Student Senate of the University of North Dakota fully supports the
 intention of North Dakota Senate Bill 2279, and urges the 64th Legislative Assembly to adopt this piece
 of legislation.

Student Body President, Tanner Franklin

SENATE JUDICIARY COMMITTEE**MONDAY, FEBRUARY 2, 2015****SENATE BILL 2279: Relating to prohibition of discrimination on the basis of sexual orientation**

Chairman David Hogue, Vice Chairman Kelly M. Armstrong, Members of the Committee, and fellow citizens of North Dakota, Greetings.

My name is Kevin R. Tengesdal; I am a native of North Dakota now living in Bismarck. I have been working in good standing with a local company for the past eleven years as a graphic designer. I am a veteran of the United States Navy. I am also a graduate from an evangelical Bible College in South Carolina with Bachelor degrees in Biblical Studies and in Biblical Languages. And, yes, I am gay.

Here we stand for a third time since 2009 seeking fair labor and housing laws for our LGBT citizens and their families. We will be told from the opposition that we are just a group seeking "special status for some" when in actuality we are seeking the same protections granted to other citizens. Groups such as The North Dakota Catholic Conference will advise you to pass judgment against us, as LGBT citizens, despite the fact that the Pontiff states that it is not our place to judge. Some who have never experienced marginalization will demand proof of discrimination, claiming that protections are not needed, since LGBT North Dakotans have done without them for so long.

We will once again hear insipid, bold-faced lies from the opposition stating that this law will allow men to accost women in public bathrooms, neglecting the fact that assault will still be a criminal act, and that there has never been a reported case of this type of assault. Not to mention, the overwhelming evidence suggests that these would-be predators are much more likely to be heterosexual men than LGBT individuals.

The opposition will even advise you that being LGBT is a lifestyle choice, that it is therefore something which should not be protected. However, they will neglect the fact that a religious lifestyle choice is itself a protected class. Not one opposition group will be able to explain how discrimination against another human fits within the "North Dakota Nice" code of honor. Their arguments will simply be nothing more than terror tactics and scary language, designed to make you ignore the real issues at hand.

5-2
2/2/15
SB 2279

As a disciple of Jesus, I ask you, who are we to decide that certain persons should be second-class citizens undeserving of the same respect and dignity that which Christ Himself gives freely? Citizens of North Dakota, should fear-mongering and hate rule human fairness and dignity, or should solid legal reasoning and a healthy dose of human compassion?

The Golden Rule is by which I have chosen to live, and one I implore you to remember when you consider this legislation – treat your neighbor, as you would want to be treated. Do we want North Dakota to be known as the state that chooses to discriminate and deny basic human decency to our fellow citizens and their families? People do make a choice whether or not to move to North Dakota, or even leave North Dakota, based upon fair labor and housing practices. Do we want to impede the forward progress of North Dakota by continuing this discrimination?

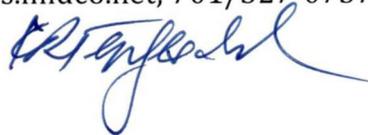
Do we want to choose to be a state surrounded by states and Canadian provinces that grant state-level protection to their LGBT citizens? Twenty-one states, the District of Columbia, Puerto Rico, and over 140 cities and counties have enacted bans on discrimination based on sexual orientation and/or sexual identity -- beginning with the District of Columbia in 1973 and with Wisconsin in 1982, over thirty years ago.

It is my hope that you and the members of the 2015 legislature will choose to be on the honorable side of history. I request a unanimous DO PASS on this bill as presented. We are a state that prides itself on a strong work ethic and supporting our families, youth and community. We must pass this legislation unconditionally, now, and without amendment.

To quote the words of John Donne, "No man is an island, entire of itself; every man is a piece of the continent, a part of the main." Representatives and fellow citizens of North Dakota let me close by simply stating that we, the LGBT citizens of North Dakota, are as much a part of this state as you, and as your LGBT family and friends, we are seeking fair treatment; to be a piece of the continent, a part of the main.

Thank you for your time and consideration.

Kevin R. Tengesdal, District 35
2025 North 16th Street, Apt 4; Bismarck, ND 58501
krten1966@bis.midco.net; 701/527-0737



Joan Glaser

6-1

Testimony for SB 2279

February 2, 2015

Treat people the way you want to be treated. Talk to people the way you want to be talked to. Respect everyone.

We are all unique individuals and different from each other. Just because an individual is gay, it does not mean they should not receive the same respect and rights as every other individual. Discrimination denies human rights often based on prejudice and incorrect perceptions. In our family we have a son who is gay. As a mother, my first instinct is to protect him from all discrimination, but I need the help from our state and our legislators to pass laws to protect his human rights, to protect him from being evicted from an apartment, to protect him from being dismissed from a job. Currently, the law does not provide any protection and we do not have any recourse to file a discrimination claim with the state.

I grew up in Garrison, North Dakota, graduated from Garrison High School, and went on to attend and graduate from North Dakota State University. After graduation, I moved to Bismarck where I met and married my wonderful husband. We have a son, a daughter, and 2 dogs to complete our family. We are no different than any other family. Our son is no different than any other son.

Our son has gone on to create a very successful business in Bismarck and employees a full time staff of 5. He has created jobs in this state. He has contributed to the foundation of the economy with his small business. He and his life partner of 5 years are very happy in North Dakota and I want to make sure they continue to have a future in this great state.

My husband and I have raised our son and daughter to be good citizens and have taught them the values we were taught from our parents. Discrimination is not one of those values. Discrimination is not a North Dakota value. When someone discriminates

6-2
SB2209
2/2/15

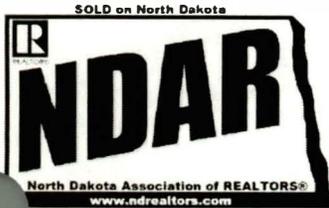
against another North Dakotan because of who they are, who they love, or how they define their family, there should be an opportunity for the individual to ask the state to investigate just like any other type of discrimination.

Through the years I began to realize not everyone respects or accepts other people as I was raised and encouraged to do so. We have experienced the devastation of a vehicle graffitied in red paint targeting our son. We have a daughter who has been bullied because her brother, who she adores, is gay. She has been bullied not only from her peers but teachers.

Discrimination must stop. And this bill is what is needed to help stop discrimination. We cannot allow our sons and daughters to have their human rights denied and taken away. We need to leave the legacy of human rights.

My father, who was a banker in Garrison, often referred to North Dakota as "God's Country". We need to make North Dakota a state where you treat people the way you want to be treated, where you talk to people the way you want to be talked to, and where we justly provide human rights.

By Joan Glaser



North Dakota Association of REALTORS®

2/2/15

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TESTIMONY IN SUPPORT OF SB 2279

Chairman Hogue and members of the Senate Judiciary Committee, my name is Nancy R. Willis and I am the Government Affairs Director of the North Dakota Association of REALTORS®.

NDAR represents more than 1600 REALTOR® and 250 affiliate members statewide.

We stand in support of SB 2279 and urge a Do Pass. REALTOR® members of NDAR also are members of the National Association of REALTORS® and by committing to abide by a code of ethics that prohibits discrimination, including for sexual orientation, they are entitled to use the trademarked designation of REALTOR.®

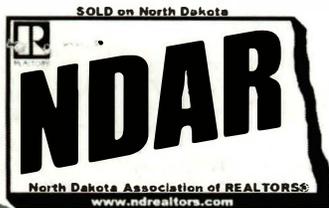
NDAR also follows a Public Policy Statement approved by its members which states:

“NDAR acknowledges and supports the right of all people to freely choose where they will live regardless of race, color, religion, sex, disability, handicap, familial status, national origin, sexual orientation or gender identity or with respect to marital status or receipt of financial assistance. This right is protected under federal and/or state fair housing laws and is a standard of practice of the *Code of Ethics of the National Association of REALTORS®*. ”

For these reasons, the ND Association of REALTORS® supports adding language prohibiting discrimination based on sexual orientation to ND law.

I would be happy to answer any questions.





North Dakota Association of REALTORS®

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7B-1
2/2/15

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ADDITIONAL INFORMATION REQUESTED BY SENATE JUDICIARY COMMITTEE IN RELATION TO SB2279

Taken from NOLO.com

Federal Law

Although federal laws protect people from workplace discrimination on the basis of race, national origin, religion, sex, age, and disability, there is no federal law that specifically outlaws workplace discrimination on the basis of sexual orientation in the private sector. (Federal government workers are protected from such discrimination.) Attempts to pass federal legislation that would outlaw sexual orientation discrimination in private workplaces have been unsuccessful to date, although more members of Congress support such a bill each year.

State Laws

There is more hope at the state level. Almost half the states and the District of Columbia have laws that currently prohibit sexual orientation discrimination in both public and private jobs: California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin. In addition, a few states have laws prohibiting sexual orientation discrimination in public workplaces only.

NOLO: LAW FOR ALL

NOLO, a wholly owned subsidiary of Internet Brands, is the integration of some of the Internet's first legal sites, including *Nolo.com*, *Divorcenet.com* and *AllLaw.com*. These sites were combined with the ExpertHub technology platform in 2011 to form the *Nolo Network*.

Nolo began publishing do-it-yourself legal guides in 1971. In the 40 years since its founding, Nolo has evolved with technology, developing do-it-yourself software and building Nolo.com into one of the Internet's leading legal websites. ExpertHub was founded in 2008 with the goal of helping solo practitioners and small law firms build their practice through the Internet. In 2010, Internet Brands acquired ExpertHub. In 2010, Internet Brands added six leading niche sites to the *ExpertHub* platform, including *Divorcenet.com*, *AllLaw.com*, and *DisabilitySecrets.com*.



Taken from HUD.gov

7B2

State	Bans sexual orientation housing discrimination	Bans gender identity/expression housing discrimination	Enforcement Agency
California	X	X	California Department of Fair Employment & Housing - (213) 439-6703
Connecticut	X	X	Connecticut Commission on Human Rights & Opportunities (860) 541-3400
Colorado	X	X	Colorado Civil Rights Division (303) 894-2997
Delaware	X		Delaware Division of Human Relations (302)739-2207
District of Columbia	X	X	District of Columbia Office of Human Rights - (202) 727-4559
Hawaii	X	X	Hawaii Civil Rights Commission (808)586-8636
Illinois	X	X	Illinois Department of Human Rights (312) 814-6200
Iowa	X	X	Iowa Civil Rights Commission (512) 281-4121
Maine	X	X	Maine Human Rights Commission (207) 624-6050
Maryland	X		Maryland Commission on Human Relations (410) 767-8563
Massachusetts	X	X	Massachusetts Commission Against Discrimination - (617) 727-3990
Minnesota	X	X	Minnesota Department of Human Rights (800) 657-3704
Nevada	X	X	Nevada Equal Rights Commission (775) 684-3849
New Jersey	X	X	New Jersey Division on Civil Rights (609) 984-3100
New Hampshire	X		New Hampshire Commission for Human Rights - (603) 271-2767
New Mexico	X	X	New Mexico Human Rights Bureau (800) 566-9471

SB 2279

2/2/15

Additional testimony
North Dakota
Association of
REALTORS® p. 3

7B3

Oregon	X	X	Oregon Bureau of Labor & Industries (971) 673-0792
Rhode Island	X	X	Rhode Island Commission for Human Rights - (401) 222-2661
Washington	X	X	Washington State Human Rights Commission - (360) 753-6770
Vermont	X	X	Vermont Human Rights Commission (802) 828-2480
Wisconsin	X		Wisconsin Equal Rights Division (608) 266-6860

SB 2279
2/2/15

#8
SB 2279
2-2-15

Chairman Hogue and Members of the Senate Judiciary Committee,

I am grateful for the opportunity to share very briefly my thoughts regarding proposals to add language to the bill that would seek to ban discrimination regarding sexual orientation and gender identity.

I'm Tim Johnson, a semi-retired pastor in the Evangelical Lutheran Church in America. (Coincidentally, my college major was Political Science with an emphasis in Constitutional Law. Unfortunately, that was so long ago it has not provided much help in preparing my remarks for today.)

The tragedy, of course, is that we feel the need to delineate the various forms discrimination takes. It is as old as human society. Some powerful part of society has decided to look down on another, restrict its participation, declare it dangerous, degenerate, undeserving of the laws that protect the rest of us.

The gain of such action through history is mystifying. Its sole accomplishment is to grant power to a single group: male, white, wealthy, a particular religion or religious viewpoint, a particular political philosophy. Without exception, societies have been diminished politically, economically, and spiritually by acts of discrimination.

This is particularly disturbing when it happens among those who claim participation in the Christian tradition, the following of one named Jesus. In a world that discriminated against women, the poor, the sick, the outcasts, the powerless of every sort, Jesus welcomed them, healed them, made them disciples. If you've got time I'll say more about the rag tag bunch of rebels he called to be in his inner circle.

To close with a line from this Jesus:

“Come to me all who are weary and heavy laden, and I will give you rest.” (Matthew 11:28) Or one more from the Apostle Paul: “There is neither Jew nor Greek, neither slave nor free, neither male nor female; for all are one in Christ Jesus.” (Galatians 3:28)

So, where shall we find ourselves and who shall we find ourselves next to? I welcome your comments and questions.

Thank you for your time and consideration.

Pastor Timothy G. Johnson
February 2, 2015

#9-1

Good morning Chairman Hogue and members of the Senate Judiciary Committee.

My name is Suzie Bartosh. I am a 29-year-old who has lived in Bismarck all of my life.

Growing up, I've experienced many challenges, one of which led me to North Dakota Teen Challenge, which I thought would have been an opportunity to give me a leg up and help me get through some issues I was struggling with. But while I was there, I was open about my sexual orientation, and heard many hurtful things. There is no doubt that I was discriminated against.

Most people who enter the Teen Challenge program are given the option to either go through and complete the program, or serve out their jail sentence. I was open about my sexual orientation and as a result, Teen Challenge told me, after I had been there for 10 months, that they were not going to let me graduate the 13-month-long program unless I became straight. They had been developing a program for me to try and turn me straight. I was very fortunate to not be one of the adults there that was under court order, and required to finish the program, or serve out a jail sentence. I refused to do their conversion therapy and I refused to pretend that I was straight in order to graduate the recovery program, so I left. But had I been under court order, a refused to turn straight, I would have been kicked out of the program, which would have violated a court order and I would have been sent to jail because of my sexual orientation.

I was not the only gay person in the program. There was another woman who was there under court order and was forced to tell Teen Challenge staff members that she was straight in order to graduate. Had she not lied, and told the staff that she was gay, she would not have been able to graduate and would have violated her court order and would have been sent to jail.

While I was discriminated against, the other horrible part about my story is that ND Teen Challenge has received state funding, yet is still able to discriminate against me, and many others.

Please pass Senate Bill 2279.

SB 2279
2/2/15

Testimony on SB2279
Senate Judiciary Committee
February 2, 2015

Mr. Chairman and members of the committee, my name is Wayne Kutzer. I support SB2279, which is all about fairness and equal treatment. It is the right thing to do. At its basic level it sends a statement that we value people.

In North Dakota we talk about creating that “quality of place”. That has to mean that we are open to diversity, and are serious about protecting the rights of everyone. We have a new campaign that touts “Live the Good Life” in ND – that is unless you are gay, then you’re on your own. You look at locations around the country that are known for innovation and creativity, that are vibrant and are attracting to young people ...they are also the places that are welcoming to the LGBT community and offer the basic protections that are in this bill.

My son was recognized by NDSU for the person that he is and work that he did while he was there, his picture hangs on a wall at NDSU’s Student Union. He has a successful career and he chose to build that career and live in Minneapolis, not North Dakota because, at the core, Minnesota offers these basic protections – it’s that basic statement that they value people.

We all want and need people to work, live and stay in ND. We talk about a talent strategy that will attract, retain and expand talent but we don’t provide this basic protection ...this affirmation that all are welcome. This is one of those strategies, one of those opportunities in which North Dakota would send a message with the passage of this bill ...that we value all of our sons and daughters, even those that feel that they have to live somewhere else to build their career and live their lives.

I request a do pass on SB 2279 and would be glad to answer any questions.

Good Morning Committee Chairman Houge and members of the Senate Judiciary committee.

For the record my name is Tom Ricker, I am the President of the North Dakota AFL-CIO, representing working men and women in North Dakota.

I would like to start by thanking Senator Nelson and the other Senators and Representatives who are supporting this bill by co-sponsoring this important piece legislation.

The North Dakota AFL-CIO is 100% in support of this legislation. While LGBT workers in 21 other states including our neighbors to the East, have protection under the law. North Dakota's LGBT workers do not yet have this basic human right guaranteed to them.

Workers who are harassed or discriminated against have lower moral, higher absenteeism rates, and lower productivity rates and quite often it results in higher employee turnover, none of which is good for either the employees or the employer.

No worker should be passed over for a promotion, denied a raise or even worse yet terminated simply because of their sexual orientation, when all they are doing is trying to earn a living or provide for themselves and their loved ones.

All workers deserve a workplace that free from harassment and discrimination of any type weather they belong to a protected class or not. There is no place in the workplace for harassment or discrimination.

Thank you for allowing me the opportunity to speak in support of Senate bill 2279. I would encourage you all to vote yes to recommend a do pass on Senate bill 2279, and send a strong, unified message to your colleagues in the Senate that you support all working people in North Dakota.

I will stand for any questions.

SB 2279
2/2/15

12A1

Aaron Weber
NDSU Student Government
SB 2279 Testimony

Chairman Hogue and members of the committee for the record my name is Aaron Weber, representing NDSU Student Government. I am here today to testify in support of SB 2279.

SB 2279 would ban discrimination based on sexual orientation or gender identity. This same sort of protection is already provided on the campus of NDSU. NDSU Policy Section 100 reads "North Dakota State University is fully committed to equal opportunity in employment decisions and educational programs and activities, in compliance with all applicable federal and state laws and including appropriate affirmative action efforts, for all individuals without regard to age, color, disability, gender expression/identity, genetic information, marital status, national origin, public assistance status, race, religion, sex, sexual orientation."

The concern here then becomes what happens when a student leaves campus to find a job? Thousands of students across the state intern each year. Yet, these same protections regarding sexual orientation and gender identity do not follow them off campus.

The second concern relating to this bill is the retention of college students post-graduation. In a state with a massive labor shortage, we can all agree this is an issue worth addressing. This piece of legislation can help ensure we attract and retain young people in our state.

After graduation a number of factors influence a student's decision to stay in state. College students want to live in a place with a sense of community. Not only that, they want a place where they will be accepted, regardless of sexual orientation or gender identity. This bill would make the decision to stay in state easier for college graduates.

With that Mr. Chairman, NDSU Student Government asks for a Do Pass on SB 2279. I will stand for any questions the committee may have at this time.

2/2/15

12B1
2/2/15

SR-22-15

A Senate Resolution to Supporting SB 2279

WHEREAS, NDSU Student Government supports ND Senate Bill 2279, and

WHEREAS, Senate Bill 2279 adds line item sexual orientation and gender identity to state policy against discrimination, and

WHEREAS, This protection is already included in NDSU Policy Section 100, and

WHEREAS, As stated in this bill the language reads, "It is the policy of this stat to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate." ;therefore, be it

Resolved, That North Dakota Student Government supports North Dakota Senate Bill 2279.

Respectfully submitted,



Testimony in support of Senate Bill 2279
From TJ Jerke
Education & Advocacy, ND Human Rights Coalition
Senate Judiciary Committee
Senator David Hogue, Chair
February 2, 2015

Chairman Hogue, and members of the Senate Judiciary Committee, My name is TJ Jerke. I am here on behalf of the North Dakota Human Rights Coalition.

The North Dakota Human Rights Coalition is a broad-based coalition of individuals and organizations around North Dakota. Since 2002, the Coalition has been passionately working to effect change so that all people in North Dakota enjoy full human rights. We do this through information, education and legislative action. The Coalition deeply values mutual respect for all people, seeking a common good without denying individual rights, and proactively promoting social and economic justice.

With that said, our coalition believes the right to work is not a "special" privilege, but access to an earned income is a basic human right that should be afforded to all people willing and able to work.

All hardworking people – including those who are gay and transgender – should be treated fairly and equally by the laws of our state, and should have the opportunity to earn a living to provide for themselves and their families. Nobody should have to live in fear of being legally fired for reasons that have nothing to do with their job performance.

13A 2

Sexual orientation is a distinguishing characteristic, and that is true even though so many gay and lesbian people have been forced for so long to hide their identities in order to avoid discrimination. Sexual orientation is a core aspect of human identity, and its expression is an integral part of human freedom.

Please, join the Coalition's mission and help effect change so that all people in North Dakota enjoy full human rights. Give Senate Bill 2279 a Do Pass recommendation.

SB 2279
2/2/15

My name is Kristen Benson and I moved to North Dakota in 2007 due to a career opportunity.

As a lesbian-identified woman, I was quite concerned about the lack of protections for LGBTQ people in the state. I decided to accept the job offer, largely because the opportunity was beneficial to my career, and my employer maintains a clear nondiscrimination policy that is inclusive to LGBTQ people. LGBTQ colleagues who have since moved to the Eastern side of the state for similar positions have opted to purchase homes in MN while they work in ND due to the increased protections just across the Red River. I have LGBTQ identified friends who starting families and are moving to MN for similar reasons, as well as young people who were born and raised in ND who move away. Ultimately, lack of protections is a deterrent for young professionals and families to live and work in North Dakota. SB 2279 will change this.

Additionally, my work focuses on gender identity. I have the opportunity to meet and speak with families whose children express their gender in diverse ways. Policy and legislation that allows public accommodations for gender diversity to allows parents to follow doctor prescribed treatments for their children who are growing up in ND.

Your committee will hear testimony on SB 2279 on Monday, February 2, 2015. I am writing in support of SB 2279 which will prohibit discrimination based on a person's sexual orientation and gender identity. I urge you to vote in favor of SB 2279 so that all North Dakotans can be free from discrimination.

I stand with North Dakotans across the state who believe all North Dakotans should be treated fairly and equally by the laws of our state.

Hardworking North Dakotans, including LGBT people, should have the opportunity to earn a living and provide for themselves and their families. Nobody should have to live in fear that they can be legally fired for reasons that have nothing to do with their job performance.

All families should have the option to live in the neighborhood of their choice without fear or discrimination because of who they are or because of what their family looks like.

Please support all North Dakotans' right to be treated fairly and equally under the law by voting yes on SB 2279.

Dr. Kristen Benson
1213 7th St N
Fargo, ND 58102

SB 2279
2/2/15

13-B2

I writing to you as a member of the Senate Judiciary Committee which will be taking testimony tomorrow on SB2279. I encourage your strong endorsement of and a do pass vote on this important piece of legislation.

I say important because it is critical in this time of a mobile workforce that North Dakota sends a strong message: "Discrimination is not a North Dakota value." I believe that our ability to recruit and retain business and a talented workforce is dependent on this message.

Sadly, at this time, it is not illegal to discriminate in terms of housing and employment against the lesbian, gay, bigender and transgender (lgbt) people. This has a deterrent impact on qualified people considering moving to North Dakota; it has a divisive impact on families when lgbt children, born and raised in North Dakota, believe their future does not lie in a state that allows this discrimination to go unchallenged.

I know you will hear considerable testimony on both sides of this issue tomorrow morning. Please consider the fact that North Dakota is one of the few states that continues to refuse to offer protection against discrimination for the lgbt population. The time is now to change that.

I am a resident of District 45 and the chair of the board of North Dakota Human Rights Coalition, a broad-based coalition of individuals and organizations with an interest in the furtherance of human rights in North Dakota. We work toward the enhancement of human rights in North Dakota through information and education.

If you have questions, please feel free to contact me. You can find more information about our organization at www.ndhrc.org.

Thank you.

Barry Nelson
902 42 Avenue North
Fargo, ND 58102

(701)235-8790

SB 2279
2/2/15

13B3

I am writing to encourage you to vote for the inclusion of sexual orientation as defined in the SB 2279 to the fair housing, human rights act and equal opportunity employment protections. A few years back the Secretary of defense authorized benefits for same sex couples / spouse of GLBT military members. if we do not pass this SB 2279, you are saying that it's ok for employers and property owners to discriminate against military members and their family. These are the people that have defended our freedom. Please do the right thing and recommend a "Do Pass" on this bill.

It's about time that we include our GLBT friends as protected from discrimination when it comes to housing and employment. I served 22 years in the military, active duty Marine infantry and ND Army NG infantry and air defense. I have deployed to 3 tours in combat. I am involved in the FMWF Chamber Military Affairs Committee. I am very involved in military organizations in the Fargo Moorhead area. (VFW, DAV, IAVA, Am. Legion) I am a past commander of the Fargo Legion Post # 2. I am a service connected Combat Disabled Veteran. I am a recipient of the Bronze Star Medal for my leadership in Iraq. With the repeal of the DADT policy I believe that it is time that North Dakota to get with the program so that our returning veterans that have served honorably will not find discrimination with housing and employment in the State that they wish to return back to. A few years ago the Secretary of Defense signed a policy that will give same sex partners of military members' spousal benefits. The Department of labor and eeoc policy does not allow for discrimination based on sexual orientation. Same sex couples of the Air Force personnel could be discriminated against in the Minot and Grand Forks communities face housing and employment discrimination with no legal recourse in ND. I know of members of the ND National Guard that this discrimination effects. It does not make sense to me that ND still allows housing and employment discrimination based on sexual orientation. I encourage you to vote to stop the discrimination in ND. I have literally fought for a free America and it really frustrates me that some believe it is still ok to discriminate against others just because of who they are. If you disagree with my logic please let me know, I would be happy to discuss this further.

Thank you for your time.

Brad Aune 1SG (Ret)
US Marine, US Army, ND ARNG
Fargo, ND 701-212-6343

SB 2279
5/2/15

13B-4

To the members of the Senate Judiciary Committee,

This letter is to show support to the bill proposed by Carolyn Nelson, who represents my district (21) in Fargo, ND.

Proposed bill 2279 is very much needed in the state of North Dakota. I know some of you may not feel that your GLBTQ constituents may need any source of protection in place, but this is false. This is a clear civil rights issue, the same as race, age, disability, religion, or national origin, all of which are current categories which are offered protections from employment and housing discrimination under North Dakota law.

Just a little story to give an example of how much this is needed. As an openly lesbian person, neither myself nor my partner are allowed to participate as adult leaders with our son's cub scout troop, because the Boy Scouts of America have a discriminatory policy in place. This harms not only parents, but also GLBTQ scout youth over the age of 18 who would like to participate as leaders within the organization. The Northern Lights Council, located in Fargo, is allowed under North Dakota law to practice hiring discrimination against GLBTQ people, and do so. If you are a gay employee of that organization (and I know at least one) you have to live closeted, and in fear that you might lose your source of income should your orientation become known to your employer.

I would ask all of you to consider lending your support to this important bill. No one should have to live in fear of losing their job or housing because of their sexual orientation or gender identity. We need to catch up North Dakota with the rest of the country on this issue.

Thank you for your consideration,

Annette Otto
Fargo, ND

SB 2279
2/2/15

Chairman Hogue, Vice Chairman Armstrong, Senators Casper, Luick, Grabinger, and Nelson I would like to respectfully request your consideration for approval of SB 2279 to stop discrimination of persons based on sexual orientation.

Discrimination, based on sexual orientation, is tantamount to legalized 'bullying'. Currently teenagers who identify as GLBTQ (Gay, Lesbian, Bisexual, Transgendered, Questioning) are up to 4 times more likely to commit suicide if rejected by family and peer groups. In a time when we are telling our youth not to 'bully' others, or that 'things will get better' for our GLBTQ family, we have legislation in place to discriminate in both employment and housing. We need to take a stand to show them that things will get better "now". Imagine a world where you can be disowned by family/friends/church, terminated by your employer and denied housing. This is, in fact, the sad reality that many GLBTQ individuals are encountering as a result of being 'themselves'.

As a gay man who was a former resident of North Dakota, and still a property owner/taxpayer in ND, I am secure in my current employer who values diversity. My husband (partnered since 2001 and married in the State of New York in 2012), is known as "my family" to my employer and to my remaining relatives just as any spouse would be. I hid my sexual orientation from my family and friends for the majority of my life and attended the funerals of all of my immediate family without them truly knowing "me". I put it to you:

How do we raise productive children when they are living in fear?
How would you feel about someone discriminating against your child or family member for something they have no more control over than they would the color of their eyes or the pigmentation of their skin?

Sexuality is not a choice.

Tomorrows leaders are being lost as they live in fear because of this 'legalized discrimination'. The result being, they move from job to job, unable to build a strong and stable employment history. This cycle prevents them from achieving their full potential as productive citizens. North Dakota is a great state filled with kind and educated people, who should not be faced with the decision of either fulfilling their lives as individuals outside of North Dakota or continuing to build the success of our state from within. I am proud of North Dakota and would like to add this legislative change as yet another example of our great state.

While we cannot legislate acceptance, you can certainly prevent discrimination.

Thank you for your time, and courage in taking a stand in stopping discrimination in North Dakota based on sexual orientation.

If I can be of any further assistance to you or your committee, I am at your service. My cell number is 704-236-4241.

Glen Materi

SB 2279
2/2/15

To my District 43 Senator and Representatives,

Please support Senate Bill #2279 to ensure that no one in North Dakota is discriminated against based on their sexual orientation, specifically people who refer to themselves as LGBTQ.

And, thank you to the sponsors of this bill. I appreciate your time and efforts.

Sincerely,

Kaye Carlson
Grand Forks, ND

SB 2279
5/2/15

13C-1

This letter is to request your support of Senate Bill 2279 regarding nondiscrimination based on sexual orientation or gender identity.

As a supporter of civil rights, the most common argument I've heard against legislation like this is it provides special rights to various groups of people.

The exact opposite is true.

Bills like this require laws intended to protect the rights of **each** citizen of North Dakota protect **all** citizens of North Dakota. As it stands now, gay and transgender North Dakota citizens are specifically excluded from the protection afforded several existing North Dakota laws.

My husband David Hamilton and I are two of the plaintiffs in the pending marriage equality lawsuit in North Dakota. As citizens of our state, we firmly believe we should be allowed the benefit and protection of state and federal marriage laws.

As members of the same gender married community, we strongly believe we simply could not be David and Bernie and enjoy our wonderful life without standing up for our fellow citizens and demand North Dakota law apply equally to all married couples.

As elected state officials, I ask you to take a moment and reflect on who you are, the legal protection you enjoy; and if you can in good conscience vote to deny those protections to your fellow North Dakotans.

Respectfully,

Bernie Erickson
3102 37 Ave S
Fargo, ND 58104
District 41

SB 2279
2/2/15

#14-A-1

Statement of the American Civil Liberties Union of North Dakota

In Support of SB 2279 – To Add Sexual Orientation & Gender Identity to the North Dakota Human Rights Act

Senate Judiciary Committee

February 2, 2015

My name is Jennifer Cook and I am the Policy Director for the American Civil Liberties Union of North Dakota. I am also a born and raised North Dakotan. I have had the distinct honor and privilege to serve our country and state as an enlisted soldier and commissioned officer in the North Dakota Army National Guard for eight years. I am a graduate of the University of North Dakota's School of Law and a licensed attorney in North Dakota. I had the pleasure of serving as a judicial law clerk for a Magistrate Judge in the United States District Court for the District of North Dakota prior to becoming the ACLU of North Dakota's Policy Director in December of this past year.

It is with this background I rise to testify in support of Senate Bill 2279. The American Civil Liberties Union of North Dakota represents its members and activists throughout North Dakota who seek to preserve and expand individual freedoms and civil liberties guaranteed by the United States and North Dakota Constitutions. In that context, we appreciate the opportunity to support this bill, which would help protect more North Dakotans by adding "sexual orientation and gender identity" to North Dakota's nondiscrimination law.

SB 2279 is an exceptionally important bill and one that is much needed. In this testimony, I will make three essential points: first, that discrimination against lesbian, gay, bisexual, and transgender individuals is a serious problem; second, that the current legal regime is inadequate to respond to that problem; and, third, that SB 2279 is an appropriately tailored remedy for that problem.

LGBT individuals who have experienced discrimination have testified before this Committee today. Their testimony stands on its own and provides the most compelling reasons this Committee and legislative body should pass this bill. Let me offer a wider scale view on why discrimination against LGBT individuals is wrong and why this legislative body should do something about it.

At the most fundamental level, workplace discrimination against people who are gay or lesbian or bisexual or transgender violates the basic North Dakotan values of equal opportunity and fair play. If a person can do the job—and can do it as well as, or better than, anyone else—an employer has no business firing or refusing to hire that person simply because he or she is lesbian, gay, bisexual, or transgender.

When employers discriminate against LGBT individuals, those individuals confront a choice that can be tragic: give up job opportunities in their chosen field—opportunities to perform jobs that they can do as well as or better than anyone else—or try to hide who they are, at great

psychological cost and fear of discovery. The testimony this Committee has heard from individuals who have experienced discrimination because of their sexual orientation or gender identity highlights the very substantial costs that discrimination imposes on those individuals.

But the cost is not just to LGBT individuals. When productive workers are denied the opportunity to perform their jobs, all of society loses out. That's why 87 percent of Fortune 500 companies in America include sexual orientation in their nondiscrimination policies, and 41 percent include gender identity. They recognize that their businesses will be more competitive when they hire all talented individuals.

Unfortunately, despite the policies of forward-thinking employers, discrimination against lesbian, gay, bisexual, and transgender individuals is widespread. Evidence abounds that LGBT people continue to experience discrimination in employment, housing, and public accommodations, among other contexts. For example, a 2011 UCLA report determined that 27% of lesbian, gay, and bisexual people across the United States had experienced some form of sexual orientation discrimination in the workplace in the five years before they were surveyed, including 7% who had lost a job because of their sexual orientation, and that 78% of transgender people across the United States had experienced employment discrimination related to their gender identity in the preceding five years. Another national study found that among transgender and gender non-conforming people, 47% had experienced an adverse job action related to their gender identity, 59% had experienced adverse treatment in an educational setting related to their gender identity, and 44% had been denied service or equal treatment in a public accommodation.¹ The data exists to support legislative findings that LGBT people are currently experiencing discrimination, which in turn form valid bases for legislation prohibiting such discrimination.

These widespread harms demand a response. Unfortunately, current law is inadequate to the task. Neither federal nor North Dakota law currently mandates equal treatment regardless of sexual orientation in employment, housing, public accommodations, or credit. Gender identity and gender expression are also not covered, although courts in some parts of the country have viewed unfair treatment based on someone's gender identity as discrimination on the basis of "sex," which is already illegal. While we believe that the U.S. Constitution bars discrimination against LGBT people in many contexts, courts have not always agreed, and explicit legal protections are necessary to address ongoing discrimination.

Only SB 2279 will ensure that LGBT North Dakotans receive equal treatment, no matter where they work or live. SB 2279 will create an equal playing field. This kind of law is the same tool state legislatures have used for decades to ensure equal treatment of certain groups of citizens who have historically been treated unequally. This law would protect all people, gay or straight, from unfair treatment on the basis of sexual orientation and gender identity, by giving the same protection that already exists under our state's law regarding discrimination on the basis of sex, race, or religion.

¹ Jaime M. Grant et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), http://transequality.org/PDFs/NTDS_Report.pdf.

SB 2279
2/2/15

SB 2279 would do nothing more than extend to sexual orientation and gender identity discrimination the same basic legal structure that has applied to other forms of employment, housing, and public accommodation discrimination in North Dakota since the North Dakota Human Rights Act's passage in 1983. The experience that employers and others have developed in complying with those provisions over the past three decades, and the law developed under those provisions, will necessarily inform, guide, and ease compliance with SB 2279 if it should be enacted into law.

While SB 2279's legal remedy is important, its underlying promise matters most. Civil rights laws work not because we are able to haul those who disobey them to court, but because most Americans and North Dakotans are good, law abiding people. When we say that as a state no one should lose a job because of religion, most businesses accept that.

Most people accept it because our laws are above all, a statement about what we believe as a people. So too with a law against sexual orientation and gender identity discrimination. And what we say with a state civil rights law banning employment, housing, and public accommodation discrimination based on sexual orientation and gender identity is not that we endorse being lesbian, gay, bisexual, or transgender any more than our federal and state civil rights laws against religious discrimination endorse being Christian, or Jewish or Muslim or agnostic. A law against sexual orientation and gender identity discrimination says that we really believe the American promise that everyone should have a fair chance to go where their brains and guts and grit can take them. A law against sexual orientation and gender identity discrimination says that we really believe in that promise, and that we want it to be real. That isn't much, and yet it is everything.

The ACLU of North Dakota urges this Committee to give SB 2279 a Do Pass recommendation.

Again, thank you for the opportunity to testify in support of this bill and I will stand for any questions.



14B1

441 G St. N.W.
Washington, DC 20548

B-324818

July 31, 2013

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Mark Kirk
United States Senate

The Honorable Jeffrey A. Merkley
United States Senate

Subject: *Update on State Statutes and Administrative Complaint Data on Employment Discrimination Based on Sexual Orientation and Gender Identity*

Federal law prohibits discrimination in employment based on a number of factors, including race, color, religion, sex, national origin, disability, and age. We reported most recently in 2009 that although federal law does not prohibit employment discrimination on the basis of sexual orientation, some states provide such protection by statute.¹ Specifically, we reported that 22 states had statutes explicitly prohibiting employment discrimination on the basis of sexual orientation; we also reported that 13 states had statutes explicitly prohibiting employment discrimination on the basis of gender identity.² In addition, we reported that, generally, the administrative complaint data reported by states at that time showed relatively few employment discrimination complaints based on sexual orientation and gender identity.

In response to your request, this letter updates our 2009 report with regard to the number of states with statutes explicitly prohibiting employment discrimination based on sexual orientation and gender identity.³ We also include data provided by those states on the number of administrative complaints related to employment discrimination filed between 2007 and 2012—specifically, the total number of complaints and the number of complaints listing sexual orientation or gender identity as a claimed basis for discrimination.

¹ GAO, *Sexual Orientation and Gender Identity Employment Discrimination: Overview of State Statutes and Complaint Data*, GAO-10-135R (Washington, D.C.: October 1, 2009).

² In our 2009 report, we did not consider whether employment discrimination based on sexual orientation or gender identity may be addressed by federal case law, regulations, policy, or guidance, nor did we do so for purposes of this letter; we did note, however, that Executive Order 13087, issued on May 28, 1998, amended Executive Order 11478 to prohibit discrimination based on sexual orientation within executive branch civilian employment.

³ As we did in 2009, we refer to the District of Columbia as a state for purposes of this letter.

SB 2279
2/2/15

We found that no states have added explicit statutory prohibitions against employment discrimination based on sexual orientation since our 2009 report was issued, leaving the total number of states with such protections at 22.⁴ In addition, we found that five states—Connecticut, Delaware, Hawaii, Massachusetts, and Nevada—have added explicit employment discrimination prohibitions on the basis of gender identity since our 2009 report was issued, bringing the total number of states with such protections to 18.⁵ There is significant overlap in the states protecting individuals from employment discrimination on the bases of sexual orientation and gender identity. Eighteen states have statutes that explicitly prohibit both sexual orientation- and gender identity-based employment discrimination, while four states have such prohibitions only for employment discrimination based on sexual orientation. With respect to complaint data, consistent with what we reported in 2009, the administrative complaint data reported to us by states for 2007 through 2012 show relatively few employment discrimination complaints based on sexual orientation and gender identity.

To complete this work, we utilized legal databases to determine which states have statutes explicitly prohibiting employment discrimination on the basis of sexual orientation or gender identity.⁶ We sent questionnaires to cognizant officials in the 22 states we identified as having such laws and asked them to verify that we had identified the relevant statutory provisions.⁷ We also asked them to provide the total number of administrative employment discrimination complaints filed for the most recent 7 years⁸ for which data were available, as well as the

⁴ The 22 states with explicit statutory provisions with regard to sexual orientation are: California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin. We did not determine whether states that lack explicit prohibitions against employment discrimination based on sexual orientation might allow such complaints to be pursued on other grounds.

⁵ The 18 states with explicit statutory provisions with regard to gender identity or other similar terms, such as gender expression or transgender status, are: California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington. We did not determine whether any other states that lack explicit statutory provisions might allow such complaints to be pursued on other grounds, though officials in Maryland and New York, which both have statutes prohibiting employment discrimination on the basis of sexual orientation, reported in their responses to our questionnaire that individuals in their states may be able to pursue administrative complaints based on gender identity in the absence of explicit state statutory provisions. Similarly, an official in New Hampshire told us that individuals in that state have the legal right to file a charge of discrimination related to gender identity despite the absence of explicit statutory language and that such charges may be pursued under the protected categories of sex and/or mental disability, depending on jurisdictional issues.

⁶ Although state case law, state regulations, or other state guidance may address issues related to employment discrimination or the scope and applicability of state employment discrimination statutes, our focus was only on the explicit language of state statutes. In addition, we did not review local government ordinances, which may also address issues related to employment discrimination.

⁷ We asked states to note whether the state statutory provisions we identified were correct, incorrect, or incomplete, and to provide corrections where appropriate. We relied on the information provided by state officials and did not do additional research to identify other state statutory provisions that may be relevant to claims of employment discrimination.

⁸ All states reported their complaint data to us by state fiscal year, federal fiscal year, or calendar year. Most states' fiscal years run from July 1 through June 30, and all references to a state fiscal year are to that time frame unless otherwise noted. Moreover, some states use a single year when referring to the state fiscal year and others use a 2 year designation. For instance, some states refer to "FY 2012," while other states use "FY 2011-2012" to refer to the same time period. In either case, this time period would run from July 1, 2011 through June 30, 2012. Some states reported complaint data to us by federal fiscal year, which runs from October 1 through September 30. In light of the variation in how states collect and report this information, we asked states to provide data for the most recent 7 years

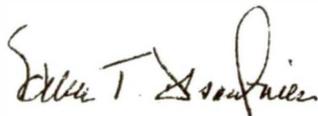
562279
2/2/13

number of complaints that identified sexual orientation or gender identity as one of the claimed bases for employment discrimination.⁹ All complaint data presented in the enclosure that follows are as reported to us by state officials; we did not independently verify the accuracy of these data or review the methodologies used by states to compile data. We created a table for each state incorporating their responses to our questionnaire and sent the tables to state officials for their comments, which we incorporated as appropriate.

Enclosed with this correspondence are tables for each of the 22 states for which we compiled information. These tables convey, for each state, the responses to our questionnaire—specifically, a citation to the relevant state statutory provisions, as well as the reported employment discrimination complaint data.

James M. Rebbe and Lincoln Schroth, Senior Attorneys, and Sheila R. McCoy, Assistant General Counsel, prepared this letter. If you have any questions about this letter, please contact me at (202) 512-4740.

Sincerely yours,



Helen T. Desaulniers
Managing Associate General Counsel

Enclosure

for which data were available to ensure that each state would provide data for the full time period included in the scope of our review, which is 2007 through 2012.

⁹ In some states, the statutes prohibiting sexual orientation- or gender identity-based employment discrimination were enacted during the time period covered by our review; therefore, these states did not provide complaint data for the full time period requested. In addition, seven states that have explicit statutory prohibitions against gender identity-based employment discrimination reported that, during the time period covered by our review, they did not separately track data related to the number of gender identity-based complaints they received. These states are: California, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, and Minnesota.

SB 2279
2/2/15

CALIFORNIA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	Cal. Gov. Code § 12940
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	Cal. Gov. Code § 12940 ¹⁰
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ¹¹	CY 2012: 19,839 CY 2011: 18,012 CY 2010: 18,335 CY 2009: 17,680 CY 2008: 18,786 CY 2007: 16,396
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	CY 2012: 1,104 CY 2011: 727 CY 2010: 717 CY 2009: 807 CY 2008: 821 CY 2007: 815
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ¹²

¹⁰ The relevant protected classes explicitly identified in state statute are "gender identity" and "gender expression."

¹¹ All complaint data in this table are reported by calendar year.

¹² According to a state official, California does not separately track complaints filed on the basis of gender identity. Currently, complaints filed on the basis of gender identity are tracked with complaints filed on the basis of sex.

SB 2279
2/2/15

COLORADO	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	Colo. Rev. Stat. § 24-34-402
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	Colo. Rev. Stat. §§ 24-34-401(7.5) and 24-34-402 ¹³
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ¹⁴	FY 2011-2012: 516 FY 2010-2011: 575 FY 2009-2010: 599 FY 2008-2009: 712 FY 2007-2008: 635 FY 2006-2007: 593
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation ¹⁵	FY 2011-2012: 35 FY 2010-2011: 41 FY 2009-2010: 33 FY 2008-2009: 34 FY 2007-2008: 21
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	FY 2011-2012: 1 FY 2010-2011: 1 FY 2009-2010: 2 FY 2008-2009: 3 FY 2007-2008: 2

¹³ State statute prohibits employment discrimination on the basis of sexual orientation, which is defined to include, in relevant part, "transgender status."

¹⁴ All complaint data in this table are reported by state fiscal year.

¹⁵ A state official told us that sexual orientation and transgender status were not protected statuses under Colorado statute before FY 2007-2008.

CONNECTICUT	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	Conn. Gen. Stat. § 46a-81c
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	Conn. Gen. Stat. § 46a-60 ¹⁶
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ¹⁷	CY 2012: 1,653 CY 2011: 1,656 CY 2010: 1,390 FY 2009-2010: 1,836 FY 2008-2009: 1,827 FY 2007-2008: 1,946 FY 2006-2007: 1,878
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	CY 2012: 41 CY 2011: 49 CY 2010: 36 FY 2009-2010: 53 FY 2008-2009: 44 FY 2007-2008: 49 FY 2006-2007: 60
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ¹⁸

¹⁶ The relevant protected class explicitly identified in state statute is "gender identity or expression." This became a protected class status on October 1, 2011.

¹⁷ Connecticut began tracking employment discrimination complaint data by calendar year rather than state fiscal year in 2010. A state official acknowledged that this may have resulted in some double counting of complaints for calendar year 2010.

¹⁸ A state official reported that the state does not separately track complaints based on gender identity.

SB 2279
2/2/15

DELAWARE	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	19 Del. C. § 711
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	19 Del. C. § 711 ¹⁹
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ²⁰	FY 2012: 727 FY 2011: 520 FY 2010: 437 FY 2009: 654 FY 2008: 665 FY 2007: 653
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation ²¹	FY 2012: 31 FY 2011: 16 FY 2010: 13
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ²²

¹⁹ Delaware amended its employment discrimination statute in June 2013 to add gender identity to the list of protected categories.

²⁰ All complaint data in this table are reported by federal fiscal year.

²¹ As we reported in 2009, sexual orientation became a protected status for purposes of employment discrimination on July 1, 2009. As a result, FY 2010 is the first year for which the state has data for this category.

²² According to a state official, the numbers listed for complaints based on sexual orientation may include complaints based on gender identity; the state does not separately track the number of complaints filed on the basis of this category.

SB 2279
2/2/15

DISTRICT OF COLUMBIA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	D.C. Code § 2-1402.11
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	D.C. Code § 2-1402.11 ²³
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ²⁴	FY 2012: 279 FY 2011: 339 FY 2010: 415 FY 2009: 488 FY 2008: 357 FY 2007: 282
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2012: 15 FY 2011: 18 FY 2010: 21 FY 2009: 24 FY 2008: 28 FY 2007: 17
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	FY 2012: 0 FY 2011: 0 FY 2010: 1 FY 2009: 1 FY 2008: 2 FY 2007: 0

²³ The relevant protected class explicitly identified in state statute is "gender identity or expression."

²⁴ All complaint data in this table are reported by state fiscal year, which runs from October 1 through September 30.

SB 2279
2/2/15

HAWAII	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	H.R.S. § 378-2
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	H.R.S. § 378-2 ²⁵
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ²⁶	FY 2011-2012: 558 FY 2010-2011: 563 FY 2009-2010: 632 FY 2008-2009: 632 FY 2007-2008: 617 FY 2006-2007: 461
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2011-2012: 12 FY 2010-2011: 9 FY 2009-2010: 15 FY 2008-2009: 9 FY 2007-2008: 8 FY 2006-2007: 3
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ²⁷

²⁵ Hawaii amended its statute in 2011 to clarify existing law with regard to sex discrimination and provide that discrimination based upon "gender identity or expression" constitutes a form of sex discrimination.

²⁶ All complaint data in this table are reported by state fiscal year.

²⁷ Hawaii reported that it does not compile separate statistics for gender identity complaints, which it categorizes as sex discrimination complaints.

SB 2279
2/2/15

ILLINOIS	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	§§ 775 ILCS 5/1-103(O-1) and (Q), 5/2-102(A), (B) and (C)
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	§§ 775 ILCS 5/1-103(O-1) and (Q), 5/2-102(A), (B) and (C) ²⁸
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ²⁹	FY 2012: 3,613 FY 2011: 3,439 FY 2010: 3,769 FY 2009: 4,007 FY 2008: 3,522 FY 2007: 3,287
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2012: 107 FY 2011: 133 FY 2010: 107 FY 2009: 149 FY 2008: 81 FY 2007: 103
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ³⁰

²⁸ State statute prohibits employment discrimination on the basis of sexual orientation, which is defined to include, in relevant part, "gender-related identity, whether or not traditionally associated with the person's designated sex at birth."

²⁹ All complaint data in this table are reported by state fiscal year.

³⁰ According to a state official, complaints based on gender identity are included in the numbers of complaints based on sexual orientation.

SB 2279
2/2/15

IOWA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	Iowa Code § 216.6
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	Iowa Code § 216.6
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ³¹	FY 2012: 1,373 FY 2011: 1,539 FY 2010: 1,458 FY 2009: 1,644 FY 2008: 1,453 FY 2007: 1,413
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation ³²	FY 2012: 69 FY 2011: 59 FY 2010: 93 FY 2009: 25 FY 2008: 17
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	FY 2012: 26 FY 2011: 3 FY 2010: 5 FY 2009: 3 FY 2008: 6

³¹ All complaint data in this table are reported by state fiscal year.

³² As we reported in 2009, Iowa started accepting employment discrimination complaints on the bases of sexual orientation and gender identity on July 1, 2007. As a result, Iowa did not report data for FY 2007 on these bases.

SB 2279
2/2/15

MAINE	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	5 M.R.S. §§ 4552, 4553(9-C) and (10), 4571, and 4572
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	5 M.R.S. §§ 4552, 4553(9-C) and (10), 4571, and 4572 ³³
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ³⁴	FY 2012: 542 FY 2011: 616 FY 2010: 494 FY 2009: 503 FY 2008: 623 FY 2007: 539
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2012: 19 FY 2011: 26 FY 2010: 34 FY 2009: 7 FY 2008: 13 FY 2007: 20
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	FY 2012: 1 FY 2011: 0 FY 2010: 0 FY 2009: 1 FY 2008: 1 FY 2007: 2

³³ State statute prohibits employment discrimination on the basis of sexual orientation, which is defined to include, in relevant part, "gender identity or expression."

³⁴ All complaint data in this table are reported by state fiscal year.

SB 2279
2/2/15

MARYLAND	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	Md. Code Ann., State Gov't. §§ 20-601 – 20-609
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	None ³⁵
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ³⁶	FY 2012: 606 FY 2011: 480 FY 2010: 598 FY 2009: 709 FY 2008: 663 FY 2007: 645
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2012: 24 FY 2011: 26 FY 2010: 22 FY 2009: 23 FY 2008: 24 FY 2007: 28
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ³⁷

³⁵ Although gender identity is not explicitly identified as a protected category under state statute, a state official reported that Maryland accepts gender identity complaints under the category of sex.

³⁶ All complaint data in this table are reported by state fiscal year.

³⁷ Maryland reported that it does not separately track gender identity complaints.

SB 2279
2/2/15

14614

MASSACHUSETTS	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	M.G.L. c. 151B, § 4(1) and (3)
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	M.G.L. c. 151B, § 4(1) and (3) ³⁸
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ³⁹	CY 2012: 2,654 CY 2011: 2,699 CY 2010: 2,861 CY 2009: 2,832 CY 2008: 2,947 CY 2007: 2,848
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	CY 2012: 105 CY 2011: 119 CY 2010: 62 CY 2009: 66 CY 2008: 73 CY 2007: 61
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ⁴⁰

³⁸ Massachusetts added gender identity as a protected category in November 2011, effective July 2012.

³⁹ All complaint data in this table are reported by calendar year.

⁴⁰ According to a state official, before Massachusetts explicitly added gender identity as a protected category, effective July 2012, the state accepted complaints alleging gender identity employment discrimination under the categories of disability, gender, or sexual orientation, and gender identity complaints previously filed under these other bases were not tracked separately. Although the state has been accepting complaints under the new protected category of gender identity since July 2012, this official stated that Massachusetts had not been specifically tracking gender identity complaints since that date, but has now begun doing so.

SB 2279
2/2/15

14B15 X

MINNESOTA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	M.S.A. § 363A.08
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	M.S.A. §§ 363A.03, Subd. 44 and 363A.08 ⁴¹
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁴²	CY 2012: 642 CY 2011: 576 CY 2010: 612 CY 2009: 629 CY 2008: 656 CY 2007: 591
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	CY 2012: 28 CY 2011: 20 CY 2010: 20 CY 2009: 24 CY 2008: 24 CY 2007: 21
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ⁴³

⁴¹ State statute prohibits employment discrimination on the basis of sexual orientation, which is defined to include, in relevant part, "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness."

⁴² All complaint data in this table are reported by calendar year.

⁴³ According to a state official, the numbers listed above for sexual orientation administrative complaints include all gender identity administrative complaints.

582279
2/2/15

NEVADA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	N.R.S. §§ 233.010 and 613.330
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	N.R.S. §§ 233.010 and 613.330 ⁴⁴
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁴⁵	CY 2012: 799 CY 2011: 756 CY 2010: 544 CY 2009: 833 CY 2008: 1,014 CY 2007: 1,159
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	CY 2012: 47 CY 2011: 40 CY 2010: 28 CY 2009: 21 CY 2008: 44 CY 2007: 38
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity ⁴⁶	CY 2012: 6 CY 2011: 0

⁴⁴ The relevant protected category explicitly identified in state statute is "gender identity or expression." This became a protected category on October 1, 2011.

⁴⁵ All complaint data in this table are reported by calendar year.

⁴⁶ Because this became a protected category on October 1, 2011, data from earlier years are not available.

NEW HAMPSHIRE	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	N.H. R.S.A. §§ 354-A:6 and 354-A:7
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	None ⁴⁷
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁴⁸	FY 2012: 257 FY 2011: 216 FY 2010: 257 FY 2009: 208 FY 2008: 251 FY 2007: 318
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2012: 6 FY 2011: 11 FY 2010: 6 FY 2009: 4 FY 2008: 7 FY 2007: 14
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity ⁴⁹	FY 2012: 1 FY 2011: 1

⁴⁷ Although gender identity is not explicitly identified as a protected category under state statute, a state official reported that individuals have the legal right to file a charge of discrimination related to gender identity and that such charges may be pursued under the protected categories of sex and/or mental disability, depending on jurisdictional issues.

⁴⁸ All complaint data in this table are reported by federal fiscal year.

⁴⁹ A state official reported that the state currently does not track gender identity complaints separately from other gender discrimination complaints, but the state official reviewed complaints for FYs 2011 and 2012 and determined that there was one complaint related to gender identity in each of those years. The official noted further that the state will separately track information related to complaints involving transgendered persons in the future.

NEW JERSEY	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	N.J.S.A. §§ 10:2-1, 10:5-3, 10:5-4, 10:5-6, 10:5-8, and 10:5-12 ⁵⁰
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	N.J.S.A. §§ 10:2-1, 10:5-3, 10:5-4, 10:5-6, 10:5-8, and 10:5-12 ⁵¹
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁵²	CY 2012: 616 CY 2011: 506 CY 2010: 548 CY 2009: 505 CY 2008: 692 CY 2007: 717
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	CY 2012: 28 CY 2011: 20 CY 2010: 20 CY 2009: 19 CY 2008: 34 CY 2007: 39
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	CY 2012: 0 CY 2011: 3 CY 2010: 5 CY 2009: 0 CY 2008: 0 CY 2007: 0

⁵⁰ The relevant protected class explicitly identified in state statute is "affectional or sexual orientation."

⁵¹ The relevant protected class explicitly identified in state statute is "gender identity or expression."

⁵² All complaint data in this table are reported by calendar year.

SB 2279
2/2/15

NEW MEXICO	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	N.M. Stat. Ann. § 28-1-7
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	N.M. Stat. Ann. § 28-1-7
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁵³	CY 2012: 479 CY 2011: 504 CY 2010: 573 CY 2009: 679 CY 2008: 690 CY 2007: 726
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	CY 2012: 25 CY 2011: 39 CY 2010: 41 CY 2009: 30 CY 2008: 45 CY 2007: 46
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	CY 2012: 1 CY 2011: 1 CY 2010: 3 CY 2009: 3 CY 2008: 1 CY 2007: 1

⁵³ All complaint data in this table are reported by calendar year.

SB2279
2/2/15

NEW YORK	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	N.Y. Executive Law § 296
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	None ⁵⁴
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁵⁵	FY 2011-2012: 5,032 FY 2010-2011: 5,684 FY 2009-2010: 6,083 FY 2008-2009: 6,445 FY 2007-2008: 6,078 FY 2006-2007: 4,615
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2011-2012: 243 FY 2010-2011: 236 FY 2009-2010: 224 FY 2008-2009: 270 FY 2007-2008: 216 FY 2006-2007: 141
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not available ⁵⁶

⁵⁴ Although gender identity is not explicitly identified as a protected category under state employment discrimination statutes, a state official reported that the state investigates some gender identity cases under the protected categories of disability and/or sex.

⁵⁵ All complaint data in this table are reported by state fiscal year, which runs from April 1 through March 31.

⁵⁶ A state official reported that the state does not separately track gender identity cases investigated on the bases of disability and/or sex.

SB 2279
2/2/15

OREGON	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	ORS §§ 659A.006 and 659A.030
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	ORS §§ 174.100, 659A.006, and 659A.030 ⁵⁷
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁵⁸	FY 2012: 1,676 FY 2011: 1,825 FY 2010: 1,811 FY 2009: 1,920 FY 2008: 2,009 FY 2007: 1,862
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation ⁵⁹	FY 2012: 30 FY 2011: 35 FY 2010: 31 FY 2009: 46 FY 2008: 22 FY 2007: 32
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	FY 2012: 0 FY 2011: 6 FY 2010: 0 FY 2009: 0 FY 2008: 0 FY 2007: 0

⁵⁷ State statute prohibits employment discrimination on the basis of sexual orientation, which is defined to include, in relevant part, "an individual's...gender identity, regardless of whether the individual's gender identity, appearance, expression, or behavior differs from that traditionally associated with the individual's sex at birth."

⁵⁸ All complaint data in this table are reported by state fiscal year.

⁵⁹ A state official reported that Oregon's statute prohibiting employment discrimination on the basis of sexual orientation and gender identity took effect in January 2008, and the state investigated sexual orientation and gender identity discrimination claims under some city and county ordinances before that time. Data for FY 2007 include complaints pursued under city and county ordinances only, while data for FY 2008 include sexual orientation and gender identity discrimination complaints pursued under city and county ordinances and state law. Data for FY 2009 through FY 2012 include only complaints pursued under state law.

SB 2279
2/2/15

RHODE ISLAND	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	R.I. Gen. Laws §§ 28-5-3 and 28-5-7
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	R.I. Gen. Laws §§ 28-5-3 and 28-5-7 ⁶⁰
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁶¹	FY 2012: 314 FY 2011: 378 FY 2010: 382 FY 2009: 356 FY 2008: 409 FY 2007: 364
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2012: 8 FY 2011: 17 FY 2010: 15 FY 2009: 15 FY 2008: 15 FY 2007: 14
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	FY 2012: 2 FY 2011: 1 FY 2010: 1 FY 2009: 0 FY 2008: 0 FY 2007: 1

⁶⁰ The relevant protected class explicitly identified in state statute is "gender identity or expression."

⁶¹ All complaint data in this table are reported by state fiscal year.

SB 2279
2/2/15

VERMONT	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	21 V.S.A. § 495
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	21 V.S.A. § 495
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁶²	FY 2012: 142 FY 2011: 105 FY 2010: 105 FY 2009: 134 FY 2008: 111 FY 2007: 92
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2012: 4 FY 2011: 2 FY 2010: 3 FY 2009: 7 FY 2008: 4 FY 2007: 4
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	FY 2012: 1 FY 2011: 0 FY 2010: 1 FY 2009: 0 FY 2008: 1 FY 2007: 0

⁶² All complaint data in this table are reported by federal fiscal year.

SB 2279
2/2/15

WASHINGTON	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	Rev. Code Wash. (ARCW) §§ 49.60.030 and 49.60.180
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	Rev. Code Wash. (ARCW) §§ 49.60.030, 49.60.040(26), and 49.60.180 ⁶³
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁶⁴	FY 2011-2012: 741 FY 2010-2011: 904 FY 2009-2010: 461 FY 2008-2009: 690 FY 2007-2008: 792 FY 2006-2007: 607
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	FY 2011-2012: 34 FY 2010-2011: 44 FY 2009-2010: 15 FY 2008-2009: 19 FY 2007-2008: 23 FY 2006-2007: 34
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	FY 2011-2012: 4 FY 2010-2011: 1 FY 2009-2010: 0 FY 2008-2009: 4 FY 2007-2008: 5 FY 2006-2007: 2

⁶³ State statute prohibits employment discrimination on the basis of sexual orientation, which is defined to include, in relevant part, "gender expression or identity." "Gender expression or identity" is defined to mean "having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth."

⁶⁴ All complaint data in this table are reported by state fiscal year.

SB 2279
2/2/15

WISCONSIN	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation	Wis. Stat. §§ 111.31 and 111.36(1)(d)
Statutory provision(s) providing protection from employment discrimination on the basis of gender identity	None
Total number of employment discrimination administrative complaints filed between 2007 and 2012 ⁶⁵	CY 2012: 3,383 CY 2011: 3,923 CY 2010: 3,722 CY 2009: 3,521 CY 2008: 3,847 CY 2007: 4,007
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is sexual orientation	CY 2012: 69 CY 2011: 75 CY 2010: 100 CY 2009: 78 CY 2008: 66 CY 2007: 61
Total number of employment discrimination administrative complaints filed between 2007 and 2012 where at least one of the claimed bases for discrimination is gender identity	Not applicable

⁶⁵ All complaint data in this table are reported by calendar year.

SB 2279
2/2/15

**Senate Judiciary Committee
February 2, 2015
SB 2279**

Mr. Chairman and members of the Senate Judiciary Committee, I am Tom Freier with the North Dakota Family Alliance and am here testifying in opposition to SB 2279.

The North Dakota Century Code and Constitution currently provide for protection from discrimination and prejudice, reflecting an attitude of dignity and respect for all.

This bill adds the ambiguous concepts of 'sexual orientation and gender identity' as special protected categories to the code for the purpose of prohibiting discrimination. The definitions of sexual orientation and gender identity (SOGI) in this bill are subjective and vague. Unlike an immutable characteristic, like race, a characteristic which cannot change, "sexual orientation" defines conduct, behavior, or perception. The sexual orientation is self-identified as perceived by the individual, and may change. And in fact, if North Dakota were to pass SB 2279, we would be granting special legal protections to groups whose members are required to self-identity.

Adding "sexual orientation and gender" to anti-discrimination code does more than protect an individual's rights or liberty, it creates a protected class, it grants special status. Granting special privileges, status, and coercive power to some at the expense of freedom for all is not in the best interests of North Dakotans.

Supreme Court criteria for a change in non-discrimination status include: an immutable, unchangeable characteristic, being economically deprived, and suffering from political powerlessness. Sexual orientation seems to fit none of these requisite categories.

As a self-identified, perceived characteristic, that may in fact change, it certainly is not immutable. Studies indicate that homosexual incomes are equal to national averages. And when we take into consideration the election of Rep. Boschee and those sponsoring this bill, it would be difficult to say the effort has no voice in the public square.

Sections of this bill deal with employers and other business related regulations. North Dakota has a diverse, tolerant, and robust workforce environment. Everyone should be treated with dignity and respect in the workplace, both employers and employees. Today North Dakota embraces the freedom of all employers to hire individuals whom they believe are the best applicants for the job and the most likely to advance the mission of their business. Governor Dalrymple in his State of State highlighted the excellence of our states business environment—derived from both employers and employees.

Government should not through unfair employment mandates like SB 2279 pick winners and losers. Businesses owners in North Dakota shouldn't have to choose between keeping their businesses open and conforming to government dictates. Across the country business owners, mostly small business owners have been subjected to long and expensive lawsuits in attempts to retain the ability to determine their employment options. (Ken Connelly, ADF, will share testimony)

Section 9 of the bill refers to public accommodations. We believe the current environment serves North Dakota well—has and will continue to. Placing the almost impossible task of enforcing the provisions of Section 9 on the owners of public accommodations would be a tremendously heavy burden, and virtually impossible to enforce. It would require the owner (the school, business, mall, park, hotel) to ascertain an individual's self-identified, 'perceived' sexual orientation—to accommodate or risk litigation.

To put a face to the potential problems with this bill we need look no further than Minnesota. The Minnesota State High School League, equivalent to our North Dakota High School Activities Association, recently put in place a policy allowing transgendered athletes to compete in either the boys or girls program. We see the logistical enforcement issues relating to bathrooms and dressing rooms, and by enlarging our view to the entire accommodations section—we see the immense difficulty in enforcement and a system opening doors to unending litigation.

While Section 19 attempts to provide exemptions for religious organizations, we believe those provisions fall far short. The provisions of this bill go far beyond a church building or the pastoral staff. The First Amendment rights of men and women of faith do not cease as they leave the church building returning to their homes, businesses, and workplace. Case in point is the 68 year old Washington florist who served and employed people who identify as homosexual, and today is being sued in a lawsuit that may well cost her her business. (read) Section 19 will not protect people like Barronelle Stutzman.

Inside the walls of the church we see the ramifications of a measure like SB 2279 resulting in the loss of First Amendment rights. Recently the city of Houston subpoenaed sermon notes and emails of pastors who dared exercise their First Amendment rights regarding the city's sexual orientation ordinance. Thankfully, after a huge public outcry, the mayor withdrew the subpoenas. The religious exemptions in SB 2279 will not protect men and women of faith, inside the church walls or outside.

In summary, we believe that North Dakota thrives today as a result of being a diverse and tolerant people, embracing dignity and respect for all. The government should not provide special status, special privilege for some at the expense of freedom for all.

NDFFA respectfully encourages a Do Not Pass on SB 2279.

(additional handouts and introduction of Ken Connelly with ADF)

SB 2279
2/2/15

#16-1



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8605 Explorer Dr., Colorado Springs, CO 80920
FocusOnTheFamily.com
719-531-3400

January 30, 2015

Introduction

Senate Bill No. 2279 seeks to add ambiguous concepts such as “sexual orientation” and “gender identity” (SOGI) as protected categories in North Dakota’s existing statutes. In North Dakota law this would represent an unprecedented change, attempting for the first time to assign legal protections to groups whose members are required to self-identify. The other categories currently protected from discrimination are typically easy to visually discern, or verifiable with past evidence. Neither sexual orientation or gender identity are immutable, or in any way discernable to an outward appearances. The inclusion of these *personal preferences* as protected classes is not necessary, lacks any scientific or statistical support, creates a serious legal concern for business owners as well as the state, and runs afoul of the First Amendment of the U.S. Constitution.

Lacks Scientific Support

“Sexual Orientation” is a construct that includes attractions, thoughts, desires, intentions, fantasies, actions and identity. “Gender identity” used to be as simple as whether people describe themselves as male or female. Today, however, it can include combinations of the two primary genders and an infinite number of other “genders” in-between. For example: the popular social media site Facebook now lists more than 50 identities based on combinations of sexual orientation and gender identity that people can choose to self-identify as. No scientific instrument or test can distinguish a person’s gender identity or sexual orientation as can be done with gender, race, nationality or even age.

Defining legal protections based on individual behaviors or perceptions greatly departs from traditional nondiscrimination law and creates a system subject to easy manipulation. By including “gender identity” as a protected class in anti-discrimination statutes, North Dakota would also be including “Gender Dysphoria,” also known as “Gender Identity Disorder” (GID), into the statutes. Gender Dysphoria is a clear and diagnosable mental disorder¹ and its inclusion as a protected class has created legal, safety and privacy problems for those areas that have passed SOGI protections:

1. In Washington State, a high school girls’ swim team was using the pool and other facilities at Evergreen State College. There, they encountered a naked man who identifies as transgender yet still possesses a male’s anatomy. The college’s non-discrimination policy keeps them from barring the man from the women’s facilities. As a result, the girls’ swim team was relegated to using a smaller, auxiliary locker and changing room.
2. In Maine, another biological male, wearing women’s clothing, makeup and jewelry started using the women’s restroom at a Denny’s. After patrons complained and he was told to use the men’s room, he sued and won the right for himself - and any person who claims to be transgendered - to use whatever bathroom was consistent with his gender identity.

¹ “Gender dysphoria,” National Institutes of Health, (<http://www.nlm.nih.gov/medlineplus/ency/article/001527.htm>) (last visited January 23, 2015).

(not read) SB 2279
2/2/15

16-2



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3. In New York, a woman on hormone therapy who had been living as a man attempted to use the men's locker room at a public pool in Staten Island. When asked to leave, she claimed she was "harassed and humiliated" and filed suit against the city.

Evidence demonstrates that some individuals change their "sexual orientation" over the course of a lifetime, both spontaneously and deliberately. Again, there is no scientific test or outward indication that would alert anyone as to another person's sexual orientation or gender identity, either in practice or in court.

There is also a decided lack of scientific evidence to provide a basis for sexual orientation protection. In 2008, the American Psychological Association acknowledged the absence of a biological link to homosexual behavior, and admitted that such behavior is a choice that is impacted by many factors.² To include such fluid and malleable categories in discrimination law is an invitation to abuse and manipulation by any individual. This further opens up the state to lawsuits by offended individuals whose privacy and safety have been violated.

Amending the Statutes is Not Necessary

There is no evidence of a problem that needs a solution through this bill. There is a dearth of cases pending in North Dakota's court system surrounding the issue presented by this proposed amendment. Further, there is no legislative showing of any evidence that "sexual orientation discrimination" is a problem in the state. As demonstrated earlier, however, the mere inclusion of this language into the North Dakota statutes would open the door to such legal and legislative issues, forcing business owners and state agencies to go on the defensive against alleged offenses whether real or imagined. Current federal and state law already prohibits sex discrimination and sexual harassment. Current law prohibits business owners from allowing issues of sexuality to become relevant in the workplace. This bill would therefore be redundant of existing protections, while removing common sense elements from the treatment of sexes as unique and different.

In the free-market system, businesses respond to market pressures and adopt policies as needs arise. The North Dakota legislature is encouraged to do the same, and not pass laws or amend them in the absence of a clear and present need to do so.

In addition, notwithstanding all of these problems, the state has failed to identify how it plans to implement these new categories into law with appropriate consideration for the concerns of others whose rights to privacy and other freedoms will be impacted. The citizens possess unequivocal rights of privacy as well as the right to enforce their entitlement to privacy; this is an important yet ignored consideration in the bill.

Creates Serious Legal Concern for Business Owners

Personal privacy rights specifically protect individuals in restrooms facilities from having their bodies exposed to members of the opposite sex.³ The bill purports to protect everyone on the basis of numerous sexual inclinations including that which is *perceived* to be their sex at any

² <http://www.narth.com/docs/deemphasizes.html>; <http://www.apa.org/topics/orientation.pdf>

³ *Lee v. Downs*, 641 F.2d 1117 (4th Cir. 1981)

SB 2279
2/2/15



given time. This qualifies everyone as a potential victim and potential plaintiff with or without verifiable cause. If this bill becomes law, employers must be cognizant of their employees' varying sexual preferences or *perceived sexual identity* in order to stay vigilant with regard to potential "sexual orientation" claims. This is an impossible task.

Given that sexual orientation and gender identity are neither immutable nor uniform; neither measureable nor discernable by physical characteristic; all private and public entities that are subject to this bill will have ***absolutely no method*** for objectively assessing an individual's "sexual orientation." As a result these business and state entities will be exposed to unfounded charges of discrimination.

Beyond opening the door to any number of potential lawsuits, amending these statutes to include SOGI protections would severely disadvantage employers and others trying to defend against such claims. An employer who has a biologically male employee who self-identifies as "bigender"⁴ must allow him to use any restroom or locker room he pleases or face a discrimination lawsuit. At the same time, that employer could find itself fending off a lawsuit from female employees who object to having to expose their bodies before a man. Before attempting to provide unnecessary protections for "gender identity" and "sexual orientation" in the state's anti-discrimination statutes, the legislature should carefully consider an answer to such legal conundrums that are likely to arise as a result.

Inclusion of SOGI in Anti-Discrimination Runs Afoul of the First Amendment

The First Amendment of the U.S. Constitution protects freedom of religion, speech and association. Article I Section 3 of the North Dakota Constitution provides an even greater guarantee of religious liberty. Including SOGI protections into anti-discrimination law would infringe on those rights. The United States Supreme Court has overruled decisions of states who claimed that private organizations have engaged in sexual orientation discrimination.⁵

There are many religious individuals who adhere to certain moral precepts regarding sexual behavior. Most of these belong to the two largest religious groups in the world comprising more than 3 billion individuals between them. Accordingly, religiously motivated business owners and individuals are constitutionally and statutorily protected from having to hire particular individuals to do certain tasks and to refrain from offering their services under particular circumstances. An example would include protecting store owners who refuse to sell sexually explicit magazines which violate their religious beliefs. Amending North Dakota's anti-discrimination statutes would bring these religious values into direct conflict with the law, and create a fundamental clash with the state's own constitution which states in part: "[T]he free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state,"⁶

⁴ "Here's a list of 58 Gender Options for Facebook Users" ABC News, <http://abcnews.go.com/blogs/headlines/2014/02/heres-a-list-of-58-gender-options-for-facebook-users/> (last visited January 23, 2015)

⁵ *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995); *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000).

⁶ Article I Section 3 North Dakota State Constitution, <http://www.legis.nd.gov/const/a01.pdf#20150130140253>

SB 2279
2/2/15



16-4

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If Senate Bill No. 2279 becomes law, it will communicate to the citizens of North Dakota that the political agenda of a few is more important than the enshrined religious freedom principles of the First Amendment and North Dakota's own Constitution. It will additionally enshrine into law a simultaneously indefensible, yet unassailable privilege that anyone - whether with genuine or criminal intent - can exploit. For the foregoing reasons, it is our opinion that the North Dakota State Legislature should refuse to endorse this or any bill which would include "sexual orientation" or "gender identity" protections in anti-discrimination laws.

2/2/15



#17-1

Jack Dalrymple
Governor

Troy T. Seibel
Commissioner



State Capitol
600 E. Boulevard Ave. - Dept. 406
Bismarck, ND 58505-0340

www.nd.gov/labor
www.nd.gov/humanrights

**Testimony on SB 2279
Prepared for the Senate Judiciary Committee**

February 2, 2015

Good morning Chairman Hogue and members of the Judiciary Committee, my name is Troy Seibel and I am the Commissioner of Labor. I appear before you today neutral on SB 2279. I would like to provide an overview of current law and the Department of Labor and Human Rights' processes in the area of discrimination, how SB 2279 would change current law, developments in the law regarding sexual orientation and gender identity discrimination, and how SB 2279 may impact the Department.

State Discrimination Laws

The Department administers and enforces state discrimination laws under the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. ch. 14-02.5). Under these anti-discrimination laws, the Department receives and investigates complaints alleging discrimination in employment, housing, public services, public accommodations, and credit transactions. As required by law, the Department emphasizes conciliation to resolve complaints, conducts investigations into complaints of discrimination, provides administrative hearings on complaints where there is probable cause to believe a discriminatory practice has occurred, and fosters prevention of discrimination through education about the rights and responsibilities provided under North Dakota's discrimination laws.

Department's Enforcement of Federal Law

In addition to receiving and investigating complaints under state law, the Department also investigates cases for the United States Department of Housing and Urban Development (HUD) under the Fair Housing Act and the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act. Cases are routinely filed under both state and federal law. We refer to these cases as "dual filed".

The EEOC currently takes the position that discrimination based upon an individual's sexual orientation is already covered under Title VII's prohibition of discrimination on the basis of sex or gender. Nationally, the EEOC has taken complaints on this basis, investigated the complaints, and issued findings that

probable cause exists to believe Title VII was violated. The EEOC has had some success with the courts on this theory. However, sexual orientation is not expressly covered under federal law. HUD has been somewhat less active than the EEOC in this area.

The Department has drafted complaints alleging sexual orientation as a protected category (in employment discrimination) and forwarded the complaint to the EEOC. However, the Department does not investigate these complaints, as the Department has interpreted past actions by the Legislature in this area to indicate it is not the Legislature's intent that sexual orientation be a protected category under the Human Rights Act. On average, the Department writes 1-2 complaints a year on the basis of sexual orientation and forwards these to the EEOC.

Developments in the area of Sexual Orientation as a Protected Category

Currently, 21 states and the District of Columbia have passed legislation which at least makes sexual orientation a protected category in their human rights laws. Some also recognize gender identity as a protected category. I have attached a survey of the laws of these 21 states and the District of Columbia.

As I mentioned previously, the EEOC takes the position that Title VII's ban on discrimination on the basis of sex already covers sexual orientation and gender identity discrimination. In addition, President Obama has issued Executive Order Nos. 11246 and 11478, which, in general, ban discrimination on the basis of sexual orientation by contractors and sub contractors of the federal government.

SB 2279 and its Impacts

SB 2279 would add sexual orientation and gender identity as protected categories under both the Human Rights Act and the Housing Discrimination Act. This would prohibit discrimination in the areas of employment, housing, public services, public accommodations, and credit transactions on the basis of one's sexual orientation or gender identity. There are certain exemptions for religious organizations, as set forth in the bill.

It is difficult to gage the impact of SB 2279 on the Department, as the increase in the Department's caseload is hard to estimate. Studies by various federal agencies have concluded that adding sexual orientation and gender identity as a protected category at the federal level would result in an increase in complaints of between 5-7%. Other studies place the increase at between 0.5% and 9%. Approximately 4% of Minnesota's complaints under its human rights act are based on sexual orientation or gender identity. Finally, the Department refers 1-2 complaints of discrimination to the EEOC on the basis of sexual orientation or gender identity per year.

The Department closed 206 investigations under state and federal discrimination statutes during calendar year 2014. If one uses a 6% increase in cases, the

SB 2279
2/2/15

17-3

Department would see an increase in its caseload of approximately 12 cases per year. However, I would stress that these numbers are based solely on rough estimates and anecdotal evidence.

I would be happy to answer any questions the committee may have.

SB 2279
2/2/15

17-4

- **California**

- **Prohibits discrimination based on sexual orientation and gender identity**

- California bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

- **Colorado**

- **Prohibits discrimination based on sexual orientation and gender identity**

- Colorado state law bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

- **Connecticut**

- **Prohibits discrimination based on sexual orientation and gender identity**

- Connecticut state law bars discrimination based on sexual orientation in employment, housing and public accommodations. Gender identity discrimination is prohibited by the state under the category of sex discrimination.

- **District of Columbia**

- **Prohibits discrimination based on sexual orientation and gender identity**

- The District of Columbia bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

- **Delaware**

- **Prohibits discrimination based on sexual orientation and gender identity**

- Delaware bars discrimination based on sexual orientation and gender identity in housing and public accommodations. Sexual orientation is protected against all employment discrimination, while gender identity is protected only against public employment discrimination.

- Delaware's protections were put in place by an executive order, administrative order or personnel regulation prohibiting discrimination against public employees based on sexual orientation and gender identity.

- **Hawaii**

- **Prohibits discrimination based on sexual orientation and gender identity**

- Hawaii bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

- **Iowa**

- **Prohibits discrimination based on sexual orientation and gender identity**

- Iowa bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

SB 2279
2/2/15

• Illinois

Prohibits discrimination based on sexual orientation and gender identity

Illinois bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• Massachusetts

Prohibits discrimination based on sexual orientation and gender identity

Massachusetts state law bars discrimination based on sexual orientation and gender identity in employment and housing. Massachusetts bars discrimination based on sexual orientation in public accommodations, however gender identity is not protected.

• Maryland

Prohibits discrimination based on sexual orientation and gender identity

Maryland state law bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• Maine

Prohibits discrimination based on sexual orientation and gender identity

Maine bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• Minnesota

Prohibits discrimination based on sexual orientation and gender identity

Minnesota bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• New Hampshire

Prohibits discrimination based on sexual orientation

New Hampshire bars discrimination based on sexual orientation in employment, housing and public accommodations, however gender identity is not protected.

• New Jersey

Prohibits discrimination based on sexual orientation and gender identity

New Jersey bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• New Mexico

Prohibits discrimination based on sexual orientation and gender identity

New Mexico bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

SB 2279

2/2/15

• Nevada

Prohibits discrimination based on sexual orientation and gender identity

Nevada bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• New York

Prohibits discrimination based on sexual orientation

New York bars discrimination based on sexual orientation in employment, housing and public accommodations, however gender identity is not protected.

New York's protections were put in place by an executive order, administrative order or personnel regulation prohibiting discrimination against public employees based on sexual orientation and gender identity.

In New York, the only prohibition against discrimination for gender identity is within the realm of public employment.

• Oregon

Prohibits discrimination based on sexual orientation and gender identity

Oregon bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• Rhode Island

Prohibits discrimination based on sexual orientation and gender identity

Rhode Island bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• Vermont

Prohibits discrimination based on sexual orientation and gender identity

Vermont bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• Washington

Prohibits discrimination based on sexual orientation and gender identity

Washington bars discrimination based on sexual orientation and gender identity in employment, housing and public accommodations.

• Wisconsin

Prohibits discrimination based on sexual orientation

Wisconsin bars discrimination based on sexual orientation in employment, housing and public accommodations, however gender identity is not protected.

SB 2279
2/2/15

18-1

This letter is to request your support of Senate Bill 2279 regarding nondiscrimination based on sexual orientation or gender identity.

As a supporter of civil rights, the most common argument I've heard against legislation like this is it provides special rights to various groups of people.

The exact opposite is true.

Bills like this require laws intended to protect the rights of *each* citizen of North Dakota protect *all* citizens of North Dakota. As it stands now, gay and transgender North Dakota citizens are specifically excluded from the protection afforded several existing North Dakota laws.

My husband David Hamilton and I are two of the plaintiffs in the pending marriage equality lawsuit in North Dakota. As citizens of our state, we firmly believe we should be allowed the benefit and protection of state and federal marriage laws.

As members of the same gender married community, we strongly believe we simply could not be David and Bernie and enjoy our wonderful life without standing up for our fellow citizens and demand North Dakota law apply equally to all married couples.

As elected state officials, I ask you to take a moment and reflect on who you are, the legal protection you enjoy; and if you can in good conscience vote to deny those protections to your fellow North Dakotans.

Respectfully,

Bernie Erickson
3102 37 Ave S
Fargo, ND 58104
District 41

SB 2279
2/2/15

19-1

Jennifer Weisgerber
Legislative District #32
Ph: 701-989-1762

Testimony in support of SB2279

To members of the Judiciary Committee:

LGBT North Dakotans are here, have been here, and want to continue to be here and make this state their home. I urge you to pass SB2279 and stand on the right side of history.

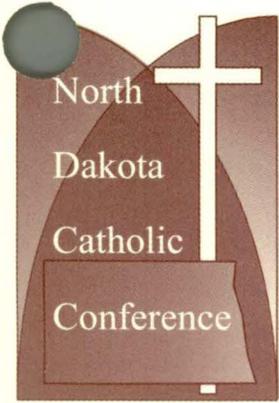
I volunteer a large part of my time to an organization that works to improve the lives of LGBT people in central and western North Dakota. We have hosted numerous listening sessions, community discussions, and recently, an open house to connect with the LGBT and allied community. We continually hear stories of discrimination but more often, and more revealing, we hear how afraid people are. Afraid to be out, to be themselves, to live a life that acknowledges their full selves. When your livelihood, your home, and your quality of life are threatened because others can choose to deny you basic rights – something is very wrong.

What kind of place does North Dakota want to be? I truly ask you – what kind? There is a chance North Dakota will see marriage equality for its LGBT citizens before they will be protected at their jobs and in their homes. That is not the place I want North Dakota to be.

This isn't a discussion about a right to belief or fear of things misunderstood – I wish it were that easy. This is a discussion about basic human rights. The right for LGBT people to exist, the right for ME to exist, in this state that I and others work so tirelessly hard to improve. **This is a discussion about the state of North Dakota being ready to say, "The lives of ALL people in this state matter and are worth protecting."**

Anything but a "do pass" is saying the exact opposite.

SB2279
2/2/15



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 2279
Date: February 2, 2015

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. Moreover, all human persons, including those with homosexual inclinations, have a right to obtain employment and housing.

But this legislation is not about how we feel about discrimination based on sexual orientation. It is not about whether a nondiscrimination policy is good for business. It is not about whether we should be like other states. It is about *this* bill.

When we look carefully at *this* bill we see that 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 sexual activities. Current law already protects lawful activities outside the place of employment. This bill, however, would create special protection for a certain class of sexual activities - not persons.

This bill is also replete with infringements upon conscience, religious liberty, and the right to engage in commerce and social service without sacrificing sincerely-held beliefs. The bill has a religious "exemption," but that exemption actually provides less protection than federal law. More troubling, the bill's exemptions do not exempt religious entities or anyone from the bill's *sexual orientation* provisions. They are nothing more than a sham apparently intended to fool people into thinking that religious rights are protected.

We realize this is an emotionally-charged issue. Respect and cooperation, however, among people with legitimate differences of opinion is what makes North Dakota great. There is no place for hate, name-calling, or stereotyping by people on either side of this issue or this particular bill. Keeping those principles in mind we urge this committee to carefully review what this bill actually does and give it a **Do Not Pass** recommendation.

SB 2279

Senate Judiciary Committee

February 2, 2015

Murray Sagsveen, Chief of Staff

701.328.1499 | murray.sagsveen@ndus.edu

I am Murray Sagsveen, Chief of Staff for the Chancellor in the North Dakota University System Office. I appear in support of Senate Bill 2279 on behalf of the State Board of Higher Education, which voted to support this bill during its meeting on January 29, 2015.

The fall 2014 enrollment in the University System's eleven institutions was 47,660 students.¹ According to Gallup surveys conducted June through December 2012, approximately 1.7% of the resident adults in North Dakota identified themselves as lesbian, gay, bisexual, or transgender (LGBT).² Based on this survey, one could estimate that at least 810 students in the University System identify themselves as lesbian, gay, bisexual, or transgender.

This bill would afford very important protections to LGBT students, including:

1. It would include sexual orientation in the state policy against discrimination.
2. It would prohibit the following from discriminating against a student because of the student's sexual orientation:
 - a. Employment agencies;
 - b. Labor organizations;
 - c. Employers;
 - d. Persons engaged in the provision of public accommodations;
 - e. Persons engaged in the provision of public services;
 - f. Persons who provide credit-related services;
 - g. Persons who sell or rent property;
 - h. Insurance organizations; and
 - i. Courts (in the jury selection process).

Our students should not be denied part-time employment, housing, insurance, credit, and public services because they identify themselves – or are perceived to be – lesbian, gay, bisexual, or transgender.

Therefore, the State Board of Higher Education urges this committee to vote "do pass" on Senate Bill 2279.

¹ 2014 Fall Enrollment Report prepared for the State Board of Higher Education (November 2014) - <http://ndus.edu/uploads/reports/131/2014-fall-enrollment-report.pdf>.

² <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

- Page 1, line 13, after "orientation" insert ", gender identity"
 - Page 2, line 13, after "disability" insert ", sexual orientation"
 - Page 4, line 29, after the second underscored comma insert "or"
 - Page 4, line 30, remove ", or gender identity"
 - Page 8, line 20, after "orientation" insert ", gender identity"
 - Page 9, line 2, after "orientation" insert ", gender identity"
 - Page 9, line 10, after "orientation" insert ", gender identity"
 - Page 9, line 22, after "orientation" insert ", gender identity"
 - Page 10, line 1, after "orientation" insert ", gender identity"
 - Page 10, line 6, after "orientation" insert ", gender identity"
 - Page 10, line 20, after "orientation" insert ", gender identity"
 - Page 10, line 25, after "orientation" insert ", gender identity"
 - Page 11, line 5, after "orientation" insert ", gender identity"
 - Page 11, line 12, after "orientation" insert ", gender identity"
 - Page 11, line 18, after "origin" insert ", sexual orientation, gender identity"
 - Page 11, line 28, after "orientation" insert ", gender identity"
 - Page 12, line 17, after "orientation" insert ", gender identity"
 - Page 12, line 21, after "orientation" insert ", gender identity"
 - Page 12, line 26, after "orientation" insert ", gender identity"
 - Page 13, line 1, after "orientation" insert ", gender identity"
 - Page 13, line 8, after "or" insert "based upon"
 - Page 13, line 8, after "orientation" insert "or gender identity"
 - Page 13, line 30, after "orientation" insert "or gender identity"
 - Page 14, line 7, after "orientation" insert "or gender identity"
- Renumber accordingly

Failed

3-23-15

SB 2279

#1

SB 2279 Testimony
Representative Joshua A. Boschee, District 44
Senate Judiciary Committee - March 23, 2105

Chairman Weisz and Committee Members,

For the record, my name is Joshua Boschee and I have the privilege of representing District 44, which is comprised of parts of north Fargo.

Bill Summary & Amendments

SB 2279 was last heard in your committee in 2009, so many of you have not had an opportunity to discuss this legislation. So, I will walk you through the bill to point out the major changes we are looking to enact.

Let's start with Section 2, which defines sexual orientation on page 4, line 20, as "actual or perceived heterosexuality, bisexuality, homosexuality or gender identity". This is a fairly universal definition as found in a number of state definitions that have enacted similar legislation. The term gender identity is further defined on page 3, line 3, as "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". Again, this is a common definition as found in a number of states that have enacted similar legislation.

The remaining sections of the bill are where we add sexual orientation as protected from discrimination related to the ND Fair Housing Act and the ND Human Rights Act. Basically, this bill will make it illegal to discriminate based on sexual orientation in housing, employment, public services and personal business transactions such as finance, insurance, buying real estate and engaging in commerce. By adding this language, we are adding into statute that discrimination is not a North Dakota value.

If you turn to page 5, line 27, through page 6, line 7, you will see that there are exemptions included to allow religious organizations to limit employment for religious positions and to employees who are of the same religion, if that is the desire of that organization.

I have also handed out amendments that are clean-up in nature related to two sections where the addition of sexual orientation was inadvertently left out. The amendments related to the religious exemptions put the language in line with the exemptions allowed under Title XII at the federal level, so our Department of Labor doesn't have to investigate any more or less than what is required under Title XII for state cases.

Discrimination Occurs

This legislation continues to be introduced because discrimination based on sexual orientation and gender identity does occur in our state. While, the vast majority of our employers and landlords do not discriminate, there have been a small number of bad actors that have done so,

thereby impacting hardworking North Dakotans and their families based on who they are, not on their ability to do their job or whether or not they adhere to the terms of their lease.

Following my testimony will be a number of North Dakotans who will speak of their experiences and the experiences of others they know in the state. One of the biggest challenges in people testifying today is the fact that many North Dakotans who have been discriminated against have moved out of the state to a state where they don't have to worry about this type of discrimination or are concerned about further discrimination upon speaking publicly.

I know of three incidents specifically in the past two years in which North Dakotans have been discriminated against based on their sexual orientation or gender identity. In one of those instances, a young man who worked at a Fargo convenience store was wearing rainbow bracelet at work. His manager asked him if he was gay, to which the young man replied that he was. The manager fired him on the spot stating that he didn't need any gay people working in his store. The young man had no recourse because not only did his employer (obviously) not provide protections, neither does the ND Department of Labor. A second incident was shared with me by a Fargo physician who was interviewing physician assistants. One of his candidates was a woman not from the area but was interested in moving to the state. While in Fargo, she and her partner looked at apartments to get a better feel for what was available if they moved here. At one of the showings, when the landlord realized they were a couple, he/she (?) abruptly ended the showing. Discrimination happens. North Dakota can do better.

Prior to being elected, I worked at North Dakota State University for eight years where I interacted with many lesbian, gay, bisexual and transgender students, students our state had invested 10's of thousands of dollars to educate and train for our workforce. The vast majority of these students wouldn't even consider North Dakota as a place to live and work after college. They had their sights set on places like Minneapolis, Milwaukee, Denver, Ames, Des Moines, Chicago, where they could live, work and continue their education free from fear of discrimination. It was frustrating to see such hard working and talented engineers, teachers, nurses, scientists and a variety of other career-oriented students choose to leave their home state because they couldn't, and rightly, shouldn't take the risk of accepting a job, starting a family and investing in a community knowing that if their employer or landlord found out they were gay or transgender, they could, under current law, lose their job or housing. North Dakota can do better.

Mr. Chairman, members of the committee, I am going to pass around two written testimonies from North Dakotans that have experienced discrimination, but were unable to be here today. The first is from a young woman, Riah Roe, who testified in 2013 about her experience with Fargo Public Schools as a speech and debate coach, after her employer discovered she was transgender. Riah grew up in Bismarck, Grand Forks and Glenburn before living in Fargo while attending college. She now lives in Minneapolis where she doesn't have to worry about legal discrimination. The second is from a Bismarck woman who testified in 2009 about her experience of being fired from her job when her supervisor found out she was in a relationship with a woman. Both of these individuals, along with the other testifiers this morning, are not

able to served under state law by the Department of Labor when this form of discrimination occurs. Additionally, their sexual orientation or gender identity were not discussed during their interview, but after being qualified for the job and actually doing the work, were found out to be gay or transgender were terminated from their primary source of income or home.

Good for Business

This legislation is important and needed as North Dakota works to recruit and retain a talented workforce and entice new businesses to our state. My generation no longer looks just for a job but also for an accepting, thriving community, and for most of my generation, those communities should provide culture, creativity and great opportunities for engagement. SB 2279 does this, and not just by sending a signal, but by proving to LGBT North Dakotans that they can be honest about who they are and whom they call family without the fear of losing their job or housing. Furthermore, it signals to people from all over the country that North Dakota is open for business and looking for hardworking, talented individuals to keep our economy and communities growing.

In its 2015 Legislative Agenda Value Statements, the Economic Development Association of ND states:

"Quality of place is essential to attracting talent to live and work in communities and in revitalization, diversification, and creation of new wealth."

Their Agenda continues to say:

"North Dakota has unmatched economic opportunity for industry and individuals. The state must support a quality of life that attracts and retains talent to maximize its growth potential."

The Department of Commerce's ND Economic Development Strategic Plan: 2010-2020 is comprised of the following goals:

"Goal 1: Create, attract, and retain quality jobs and workforce targeted industries and high-demand occupations.

Goal 2: Strengthen North Dakota's business climate and image to increase national and global competitiveness.

Goal 3: Enhance North Dakota's image."

The 2014 Update from ND 2020 and Beyond states:

"North Dakota must capitalize on the opportunities that have emerged as a result of our state's impressive economic growth. We must continue to work to create an excellent quality of life for our most important asset, our people. Access to safe communities, exceptional education, quality healthcare and jobs are an important part of the future for our citizens. We must continue to strengthen our overall business climate to ensure our people continue to have ample opportunities, while still diversifying our economy."

Currently, 89% of Fortune 500 companies provide protections against discrimination based on sexual orientation and 66% based on gender identity. Large employers in North Dakota like

Microsoft, Sanford Health, Wal-Mart, Verizon Wireless, Wells Fargo, Best Buy, Target and US Bank to name a few offer these protections to their employees. In the public sector, the Federal government, including the military and National Guard, along with the ND University System provide protections to LGBT employees, employees that all live and work in our state, employees who are protected while at work but leave those protections at their employer's door as they head to their apartment or a part-time job.

When employees look for a place to work and live, North Dakota has to compete with 21 other states, several here in our own region, including MN, IA, IL, WI, and CO, that have non-discrimination policies already in place. Passing SB 2279 will open up North Dakota to a number of employers and employees who may have never considered the opportunities our great state provides.

So to do the math, Mr. Chairman and members of the committee, is it better to allow a couple employers who discriminate based on sexual orientation or gender identity continue to do so without any accountability or is it better to amend the law to ensure that the hundreds of LGBT North Dakotans that leave the state each year can live and work in their home state without fear of being discriminated against? Add to that the thousands of LGBT nurses, engineers, teachers, physicians and entrepreneurs who aren't even considering North Dakota as a place to live and work, I think the choice is an easy one to make.

Cities & Political Subdivisions

The cities of Grand Forks and Fargo have both passed ordinances as a city employers stating that they would not discriminate based on sexual orientation and gender identity. Grand Forks passed an ordinance that added non-discrimination policies to rentals based on sexual orientation and gender identity, something they were able to do because they have a rental registry (which is pretty unique in the state). These cities, along with the City of Bismarck, have expressed support for passing this legislation because they are limited as political subdivisions in what they can do. Housing and employment jurisdiction falls to the state under the Department of Labor and Human Rights, so cities are not able to provide local assistance to their residents in cases where they have been discriminated against based on their sexual orientation or gender identity. These cities understand and embrace the importance of having diverse, inclusive and vibrant communities to attract engaged, hardworking people to fill many of the vacant professional and skilled labor positions.

Along with these cities, school boards such as Devils Lake's have created policies that provide recourse against discrimination based on sexual orientation and gender identity, as has the State Board of Higher Education for the 45,000 students enrolled in their institutions and the thousands of employees that fall under their purview. Again, the challenge these entities face as employers and service providers is that their employees and students are only protected as long as they are at work or school. When they go home at night or to an off-campus job, those protections remain only in their rear-view mirror. Their partners may not have similar protections in their jobs, creating a challenging situation for dual income families. North Dakotans shouldn't live in two versions of one state - one where they are protected from eight

to five or in the classroom and another when they leave the parking lot. North Dakota can do better.

Some of you and others in the chamber have expressed concerns about the bill and some of its impacts. I would like to address those at this point.

Perception vs. Actual

As I indicated earlier in my testimony, the use of "actual or perceived sexual orientation" or "gender identity" is common language in the various state definitions throughout the country, which the draft language was modeled from. I understand the concerns that the word perceived would put a burden on the employer in terms of an employee being disciplined or passed over for a promotion that they were gay so as to fall under this statute. An individual making a claim would have the burden to demonstrate that it was the fact that they were gay or perceived to be gay was the reason they were discriminated against in order to substantiate the claim. They couldn't just claim to be gay in order to fall under these protections.

Additionally, including "perceived" protects straight men and women, who's supervisor or employer for whatever reason thinks the individual is gay. In fact, the only two cases brought forward to the Department of Labor in the last two years that would fall under this proposed language were heterosexual men who were harassed by their supervisor or employer for being gay, when in fact they were not.

Bathrooms & Locker Rooms

There will be individuals following me that will be able to speak in greater detail about this aspect, but I want you to take this into perspective. If any of you and your families have traveled to or through Minnesota in the last 22 years, you have likely used a public bathroom that has allowed individuals to use the bathroom of their choosing based on their gender identity. Iowa, Colorado, Nevada and 13 other states, along with the District of Columbia have similar laws enacted with no documented problems.

For most transgender individuals, bathrooms and locker rooms end up being the places they are most likely to be assaulted or harmed. Based on this, they tend to seek out single room restrooms, which are common in the vast majority of small businesses, as they are convenient for most people who prefer privacy in the bathroom. In fact, the reality is, that transgender people are already using the restrooms of their choice throughout our state with most of us not even realizing it.

Housing

The ND Fair Housing Act, in compliance with the federal fair housing laws allows landlords that rent space in their private home or have four or less rental units to be exempt from the nondiscrimination component of the fair housing act. This doesn't change with the passage of SB 2279. An individual that rents out their basement or owns a four-plex, will still be allowed to be selective in whom they rent to.

Finally Mr. Chairman and members of the committee, the majority of North Dakotans agree, that discrimination is not a North Dakota value. Included in my testimony are the results of a phone survey conducted last week by DFM Research of 400 North Dakota residents over the age of 18. You will find that:

- 59% of North Dakotans support SB 2279, including
- 68% of east city residents and 62% of west city residents
- 61% of east rural residents
- 63% of self-identified independents and
- 65% of self-identified moderates

It is clear that North Dakotans value hard work and talent. They do not value discrimination, which is why if a North Dakotan is discriminated against, they should be able to work with the Department of Labor to rectify the situation.

Mr. Chairmen and members of the committee, you have a decision to make today with SB 2279. Will our great state continue to allow some of its hard working residents to be discriminated against because of who they are or who they love or will we stand behind the value that discrimination is not allowed in our state, because we value hard work and personal responsibility. I hope you agree with me and the majority of North Dakotans that your family, friends, neighbors and co-workers should live free of the fear of discrimination and recommend a Do Pass for SB 2279.

I stand for any questions.

Interviews: 400 residents over the age 18 that reside in North Dakota

Margin of Error: ±4.9 percentage points

Interview Dates: January 26- 31, 2015

Sample: Landline and cell phone sample. Random digit numbers provided by Survey Sample International (SSI) of Fairfield, CT. SSI provided Stone Research with 4,000 residential random phone numbers from a pool of listed and unlisted numbers in the boundary area, and 1,700 cell phone numbers; which then were stratified into five distinct regions.

Survey Sponsor: Friends of Joshua Boschee

Q: North Dakota prohibits discrimination on the basis of race, color, religion, sex, age, but not on the basis of sexual orientation. Some in the legislature want to change that, and have introduced Senate Bill 2279 which would also prohibit discrimination on the basis of sexual orientation. Suppose you had a vote on Senate Bill 2279, would you vote YES to pass the bill, or NO to reject the Bill?

Yes, to pass **59%**
 No, to reject **31**
 (VOL) Unsure **10**

<u>Gender</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
Men	58%	33	9	+25
Women	59	30	11	+29
<u>Age</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
18-39	60	30	10	+30
40-64	56	36	9	+20
65 plus	60	26	14	+34
<u>Education</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
High School/Less	58	28	14	+30
Some College/AA Degree	54	37	9	+17
Bachelor/Graduate Degree	66	28	6	+38
<u>Region</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
East City	68	26	6	+42
West City	62	27	10	+35
East Rural	61	33	7	+28
Central Rural	49	37	14	+12
West Rural	49	36	15	+13
<u>Party Identification</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
Democrat	73	18	9	+55
Independent	63	30	8	+33
Republican	45	41	13	+ 4
<u>Ideology</u>	<u>Yes</u>	<u>No</u>	<u>Unsure</u>	<u>GAP</u>
Liberal	71	19	10	+52
Moderate	65	26	9	+39
Conservative	49	40	11	+ 9
Tea Party (Favorable)	38	53	10	-15

15.0742.01005
Title.

Prepared by the Legislative Council staff for
Representative Boschee
March 20, 2015

3-23-15

SB2279

#2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

Page 2, line 13, after "disability" insert ", sexual orientation"

Page 6, line 3, remove "or who adhere to the religion's tenets unless"

Page 6, line 4, remove "membership is restricted because of race, color, or national origin"

Page 6, line 7, remove "or who adhere to the religion's tenets"

Page 11, line 18, after "origin" insert ", sexual orientation"

Renumber accordingly

3-23-15

My name is Lucas Stroh. I grew up on a ranch outside of Killdeer, North Dakota. I currently work as an EMT, and I will begin paramedic school this fall. I also run cattle on my family's ranch, and when I am not on call, I work alongside my family as a rancher.

How has discrimination in this state directly affected me since coming out? How did it affect me before?

I came out when I was 17 years old. My father was the last person I told. I can honestly say that overall, I have had a substantial amount of good experiences since. But, as many things go, you don't remember the good nearly as much as the bad. The bad - it always seems to outweigh the good in so many instances that you often forget the good.

While attending college my freshman year, I did not plan on telling anyone that I was gay. It is my very personal, very difficult secret to handle. I came out in High School, not to everyone but to a few key folks. But as I quickly learned, you can't trust anyone. Our first week of freshman year of college, one friend I was close with from my hometown liked a girl. This is fine, I don't have any problem with someone having feelings for another person, or loving another person, however I do take issue with being the topic of conversation. He decided to introduce her to me. "This is my gay friend, Luke." I felt like I had been kicked in the stomach. I was hurt, ashamed and shocked. This girl that he liked was a party girl, a student athlete, and was very popular. At that point, I knew that everyone would know, but I kept my head down.

By November, everyone - students, some staff, and even professors - knew that I was "the gay kid". Many were supportive, but it's never the supportive ones that you take offense to. I was having a difficult time with my math class, so, as encouraged by our professor, I went to a study group. That was when I first experienced discrimination. A couple of my peers didn't want a "gay guy" in their group. So, they harassed me for a while, and after this didn't work, because I grew up in a small town in western North Dakota, and knew what bullying was and how to handle it, they told me that I was no longer allowed in their group anymore. Now, had I been promoting a specific agenda, had I been acting inappropriately or had I said I was gay to these kids, I would have understood. But I didn't.

I was raised by an ultra-conservative Catholic father and his subservient Baptist wife, so I knew how to act in public. I also knew that I wouldn't and still will not EVER be one of those people that makes others uncomfortable because of my sexual orientation. Really, it angered me that this happened, and because this was a student-led group that was overseen by staff members of the school, I said something about what had happened. Instead of doing something, instead of trying to find a way to amend the situation, the staff member, an assistant professor at this school, looked at me and said, "Lucas, maybe you need to find a different study group." Although she was right, she still should have done something, at a minimum have said something to these kids, but she didn't.

It was at that point that I knew that if I stayed at this school, which I did for the next 3 semesters, it was going to be hell. I stayed to make a point more than anything.

The next time I was discriminated against was with the gentleman whom was anchorage of student life. I wanted to start a group on campus that would allow kids who are GLBT to come together and talk about what they were experiencing. I wanted to make a video showing that this school still welcomed its GLBT students as he claimed it did for the Trevor Project, which has thousands of people who support GLBT folks sharing their beliefs and stories, showing GLBTQ youth how it gets better. He wouldn't allow it. He said that for these things to occur, he would need to submit paperwork here, and have a meeting with the staff members. Basically, it was far too much work for him to do for gay students. He did it for several other clubs on campus, for many other causes, but not this one. I dropped it.

My studies suffered because of my decision to tough it out, my mental health was shot, and once I left this institution, I got a lot better - mentally, emotionally, and physically. It took me the next 3 years to get over it, to forgive my friend for outing me, but I did.

The next time I experienced discrimination was when I rented an apartment from someone. They discovered that I was gay, (because, again, I don't like to flaunt it), and suddenly it became a requirement that I attend their church or my rent would go up substantially, and even then they still made my life a living hell. They would pop in at almost any hour of the day multiple times a week with no regard for privacy to see how the place looked, looking for a reason to terminate my contract because there was no "morals clause" in it. I lived in that apartment for 5 months before I moved out. It wasn't worth it. If I wanted to have someone check in on me every day, multiple times a day, I can just move into my old bedroom with my family. Really it's no different, except they don't force me to attend their church.

I know that SB2279 will not change the mindset of all North Dakotans. I know that the day after it goes into effect, I won't wake up and everything that I have experienced in my 22 years of life will suddenly vanish as if it never happened. What I do know is this - many GLBT individuals will be given some security in this world. Many of us will no longer fear that we can lose our house, apartment, or job because of who we love. Doctors, Lawyers, Business Men and Women, Pre-Hospital Medical Personal, Police Officers, Teachers and even Farm hands will feel more comfortable; we will feel at ease. Although 2279 isn't going to fix other issues that come with being GLBT, like bullying, it will at least give us some solid ground to stand on for once. It will at least show the rest of the country that people here do care, as I know many of you, from both sides of the aisle do. It will show our residents and fellow Americans that in North Dakota, a state that I was raised in and truly love, that your age, gender, race, sexual orientation, political affiliation, socioeconomic status, disability, and religion doesn't matter. It will show everyone who is watching, and even some who aren't now but may look back later 50-100 years from now, that we care. We care about EVERYONE, and that's why this is worth giving a chance.

Luke Stroh, Killdeer, ND
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Luke Stroh Photography



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Committees:

Agriculture
Education

SB2279

#4

3-23-15

March 23, 2015

Chairman Weisz, members of the committee:

In my short time here, I've come to gain a whole lot of respect for this chamber and everyone in it. I respect your work, your life experiences, the issues on which we can agree, and even the issues on which we disagree. I respect the communities and constituents we serve, and I have a new found respect with how we each of us got to these desks and the people we represent from these seats.

Perhaps my standing in front of you and being a senator at all speaks a bit to how much times are changing on certain issues.

This bill and the decision you're about to make on it is pretty simple:

- It's not a partisan issue. There will be Republicans and Democrats who will support it.
- It's not a geographical issue. There will be rural and urban legislators from each side of the state and the places in between who will support it.
- It's not a generational issue. There will be legislators, some brand new and some long-serving, some young and some more "seasoned", who will support it.
- It's not an issue that requires political courage, because a majority of North Dakotans support it.
- This bill doesn't create a protected class any more than it does for race, color, religion, sex, or age because we all have a sexual orientation. Mine happens to be heterosexual, and that will be protected just as much as any other sexual orientation under this bill. If it passes and I go to work for my very successful business-owner friend who happens to be gay, he could no longer fire me just for being straight. We don't often think about it that way, because we don't have to. He should still fire me, however, for being woefully unqualified to do the job.
- And this bill isn't even a religious issue. As a proud, piano-playing Christian at my church, I certainly respect matters of faith, but I also respect North Dakota law which holds that we can't be discriminated against, nor discriminate against others, because of our faith. I don't have to be Jewish or believe in the Jewish faith, or even have any religion at all, to understand that discrimination against someone who IS Jewish is wrong.

Plain and simple, this bill is about making a change in policy. It doesn't require a change in mind or heart. Either we believe it's ok under the law to fire people from their jobs or kick them out of their apartments for who they are, or we don't. Whether or not you feel being an LGBT person is right or wrong is actually irrelevant.

SB 2279 is about our people - your friends, your kids' friends, someone's sibling or niece or nephew or grandchild, our past, present, and future students or coworkers or legislative colleagues - anyone who calls North Dakota "home". LGBT people and those who love them are our constituents in Fargo and Fessenden, in Bowman and in Bismarck. LGBT people are North Dakotans. They deserve to be treated under the law exactly the same - not better, not worse - as you and I are.

I'd respectfully request a "yes" vote to extend to all North Dakotans the same respect I've come to have and will continue to have for each of you.

#5

3-23-15

Aaron Weber
NDSU Student Government
SB 2279 Testimony

Chairman Weisz and members of the committee for the record my name is Aaron Weber, representing NDSU Student Government. I am here today to testify in support of SB 2279.

SB 2279 would ban discrimination based on sexual orientation or gender identity. This same sort of protection is already provided on the campus of NDSU. NDSU Policy Section 100 reads "North Dakota State University is fully committed to equal opportunity in employment decisions and educational programs and activities, in compliance with all applicable federal and state laws and including appropriate affirmative action efforts, for all individuals without regard to age, color, disability, gender expression/identity, genetic information, marital status, national origin, public assistance status, race, religion, sex, sexual orientation."

The concern then becomes what happens when a student leaves campus to find a job? Hundreds of students across the state intern each year. Yet, these same protections regarding sexual orientation and gender identity do not follow them off campus.

The second concern relating to this bill is the retention of college students post-graduation. In a state with a massive labor shortage, we can all agree this is an issue worth addressing. This piece of legislation can help ensure we attract and retain young people in our state.

After graduation a number of factors influence a student's decision to stay in state. College students want to live in a place with a sense of community. Not only that, they want a place where they will be accepted, regardless of sexual orientation or gender identity. This bill would make the decision to stay in state easier for college graduates.

In summary, we are simply asking that the same protections NDUS students are afforded on campus follow them into the community and state. With that Mr. Chairman, NDSU Student Government asks for a Do Pass on SB 2279. I will stand for any questions the committee may have at this time.

A Senate Resolution to Supporting SB 2279

WHEREAS, NDSU Student Government supports ND Senate Bill 2279, and

WHEREAS, Senate Bill 2279 adds line item sexual orientation and gender identity to state policy against discrimination, and

WHEREAS, This protection is already included in NDSU Policy Section 100, and

WHEREAS, As stated in this bill the language reads, "It is the policy of this stat to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate." ;therefore, be it

Resolved, That North Dakota State University Student Government supports Senate Bill 2279.

Respectfully submitted,

SB 2279

House Human Services Committee

March 23, 2015

Becky Lamboley, Director of Student Affairs

701.224.2688 | rebecca.lamboley@ndus.edu

I am Becky Lamboley, Director of Student Affairs for the North Dakota University System. I am also the Chair of the NDUS Diversity Council. I appear in support of Senate Bill 2279 on behalf of the State Board of Higher Education, which voted to support this bill during its meeting on January 29, 2015.

The fall 2014 enrollment in the University System's eleven institutions was 47,660 students.¹ According to Gallup surveys conducted June through December 2012, approximately 1.7% of the resident adults in North Dakota identified themselves as lesbian, gay, bisexual, or transgender (LGBT).² Based on this survey, one could estimate that at least 810 students in the University System identify themselves as lesbian, gay, bisexual, or transgender.

The Human Rights Campaign, www.hrc.org, recently published an article that emphasizes the importance of legislation such as Senate Bill 2279. The simple and unfortunate reality is that for all the progress made in recent years, LGBT Americans still lack fundamental legal protections when it comes to issues like employment and housing. The article stated: "Nearly two-thirds of LGBT Americans report experiencing discrimination [...] everyone, including LGBT Americans, [should have] a fair chance to earn a living, advance themselves, and be judged on their performance, not on who they are or who they love."³

The State Board of Higher Education has, for some time, taken appropriate steps to provide a safe and welcoming living and learning environment for LGBT students.

For example, LGBT students seeking employment on campus are protected by SBHE Policy 603.2, which states in part:

Every vacant position shall be filled based upon applicants' qualifications and performance requirements of the job. Discrimination based upon sex, race, color, religion, age, physical or mental disability, status with regard to marriage or public assistance, sexual orientation....in appointment, promotion, salary, or conditions of employment is prohibited.⁴

However, if LGBT students seek employment off campus, employers may lawfully refuse to hire a student merely because the employer believes the student is gay.

Similarly, each institution has adopted policies that emphasize it encourages a diverse campus. For example, the UND catalog states: "Diversity in the University is constituted by the full participation of persons of different racial

¹ 2014 Fall Enrollment Report prepared for the State Board of Higher Education (November 2014) -

<http://ndus.edu/uploads/reports/131/2014-fall-enrollment-report.pdf>.

² <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

³ David Stacy, Government Affairs Director for the Human Rights Campaign, March 7, 2015

<http://www.hrc.org/blog/entry/new-hrc-poll-shows-overwhelming-support-for-federal-lgbt-non-discrimination>

⁴ Also see NDUS Human Resource Policy 3.1.

and ethnic heritage, age, gender, socio-economic background, religion, and sexual orientation; of persons with disabilities; and of people from other countries.”⁵

However, if LGBT students step off campus to seek public accommodations, to seek public services, to seek credit-related services, or to rent an apartment, they can be lawfully denied those public services simply because of their actual or perceived sexual orientation.

Students attending North Dakota institutions of higher education deserve much better. LGBT students deserve to be treated, on campus and off campus, with the same civil rights and respect as all other students and citizens.

Support our students by supporting this bill. Students should not be denied employment, housing, insurance, credit, and public services off campus simply because they identify as or are perceived to be lesbian, gay, bisexual, or transgender.

Therefore, the State Board of Higher Education, the North Dakota University System, the system’s Diversity Council, and myself as the System’s Director of Student Affairs urge a “do pass” for Senate Bill 2279.

⁵ http://und.edu/academics/registrar/_files/docs/catalogs/catalog-2013-2015.pdf. UND Statement on Institutional Diversity and Pluralism, Approved by University Senate December 7, 2006.

To the representatives of the great state of North Dakota and to those it may concern:

My name is Max Maltese, I occupied North Dakota from the summer of 2009 until my graduation from the University of North Dakota in May of 2014. And I left as quickly as I could. Not because of the inhospitable winters or lack of diversity of food, but because of the lack of open mindedness. I left because in my time at UND and living in Grand Forks, I faced prejudice and bigoted views. I don't blame you! This is a state deeply entrenched in religious ideology and tradition. But the prejudice I faced glares point-blank in the face of the traditions and morals this country was founded upon, the tradition of acceptance of those who are different, regardless of religion or race and the moral cognition of respect for difference and love for your fellow citizen. That's why I write today, because the prejudice I faced based on my sexual orientation is wrong on so many levels. Because I am gay I was evicted from my home. Can you imagine? Something you have about as much control over as your eye color or height, you can be fired, evicted, and prejudiced against with no protection as offered to practically anybody else. I would like to share with you my worst experience of this in Grand Forks to offer you a perspective on what shameful behavior is propagated by our inaction.

My junior year of college I was renting a room in a house just off campus, not two blocks from the university, a supposed beacon of higher thinking. I have three roommates and our property manager, a previous deputy of the Grand Forks Police force, has us come to her house to drop off rent every month. It is early in the academic year, September if I remember correctly, and it was my turn to drop off the rent checks. I had just come from a silent protest on campus wearing a shirt saying "Some dudes marry other dudes, get used to it". To give context to this shirt, in 2012 only 5 states had gay marriage available to their citizens. When I approached the house I could see, we'll call her Jan, make a move to the door after watching me walk up the block and her driveway to the door. I was let in and sat down to do the usual chit-chat while she wrote up my receipt. Instead I was met with cold Norwegian silence and a curt "nice shirt" as I walked out of the door. Now I'm not a sensitive person, and plenty of people have not liked me before so I shrugged it off and went on my way.

This interaction shaped the next 9 months of my occupation of the house. From that point onward, she would not answer the door when I came and I left the rent in her mailbox, I could get no receipts of the rent. Again, not too alarming, but getting more and more suspicious. This cold behavior did not hit a fever pitch until May of the following year, near the end of the spring semester. It was the weekend before finals when out of the blue I receive a call from Jan, she says she had "discussed it" with the property owners and they would not be continuing my lease and I had 10 days to remove my belongings from the house. This was even before the lease term ended on June 1st. I am studying for finals and am notified I have 10 days to get my stuff out of the house AND I have a 5 week trip in Europe departing the day after my

finals were to have ended. It is at this point it all comes together. The cold behavior, the comment on my shirt, and this now very aggressive eviction at the most terrible of times is more than personal it feels like an attack. I explain the situation but she has no sympathy and no options, just get out. Imagine that feeling, the stress of school and work, planning a trip and gearing up for it, and having to find a place to move to and move all your stuff in just 6 days so you can make it on your trip. Luckily with the support of my roommates and local friends I was able to store my stuff scattered across grand forks and make my trip but upon return to grand forks I was homeless for three months. Homeless at 21.

I met with a lawyer before I left. There had to be some legal recourse for this, anything. And what did he tell me? Heck, he could be fired for being gay and he, the attorney, would have no legal recourse. I lost a home because of who I am, this isn't just financially distressing, but it affects your self-worth. The state I vote in, I came to age as a voter and spent a few of my best years in, has no interest in protecting me from people who simply can't accept something as natural as your height or your eye color. The state I pay taxes to in order to build roads and invest in the future of every citizen, but this state seems to care less about little old me. These actions and the lack of recourse for them is a deplorable tarnish on North Dakota. I don't expect North Dakota to move quickly to accepting gay marriage but the most fundamental protections granted to every citizen should include protection from prejudice based on sexual orientation. It is now 2015, 37 of your fellow states now allow the marriage of same sex couples. 21 states and the District of Columbia have laws prohibiting employment discrimination based on sexual orientation. 22 states and the District of Columbia have laws prohibiting housing discrimination based on sexual orientation. This country is turning in a new direction and it is time for North Dakota to realize this and unite with its fellow states to say no to hate, no to prejudice and no to discrimination.

Thank you very much for your time and consideration.

Maxwell Maltese

SB2279

#8

2-23-15



Good Morning Committee Chairman Weisz and members of the House Human Services committee.

For the record my name is Tom Ricker, I am the President of the North Dakota AFL-CIO, representing working men and women in North Dakota.

I would like to start by thanking Senator Nelson and the other Senators and Representatives who are supporting this bill by co-sponsoring this important piece of legislation.

The North Dakota AFL-CIO is 100% in support of this legislation. While LGBT workers in 21 other states including our neighbors to the East, have protection under the law. North Dakota's LGBT workers do not yet have this basic human right guaranteed to them.

Workers who are harassed or discriminated against have lower moral, higher absenteeism rates, and lower productivity rates and quite often it results in higher employee turnover, none of which is good for either the employees or the employer.

According to research from the Society for Human Resource Management the cost to replace a salaried employee making \$50,000 per year costs an employer between \$25,000 and \$37,500. That is the equivalent of six to nine months of salary on top of their normal wages.

No worker should be passed over for a promotion, denied a raise or even worse yet terminated simply because of their sexual orientation, when all they are doing is trying to earn a living and provide for themselves and their loved ones.

All workers deserve a workplace that free from harassment and discrimination of any type weather they belong to a protected class or not. There is no place in the workplace for harassment or discrimination.

Thank you for allowing me the opportunity to speak in support of Senate bill 2279. I would encourage you all to vote yes to recommend a do pass on Senate bill 2279, and send a strong, unified message to your colleagues in the House that you support all working people in North Dakota.

I will now stand for any questions.

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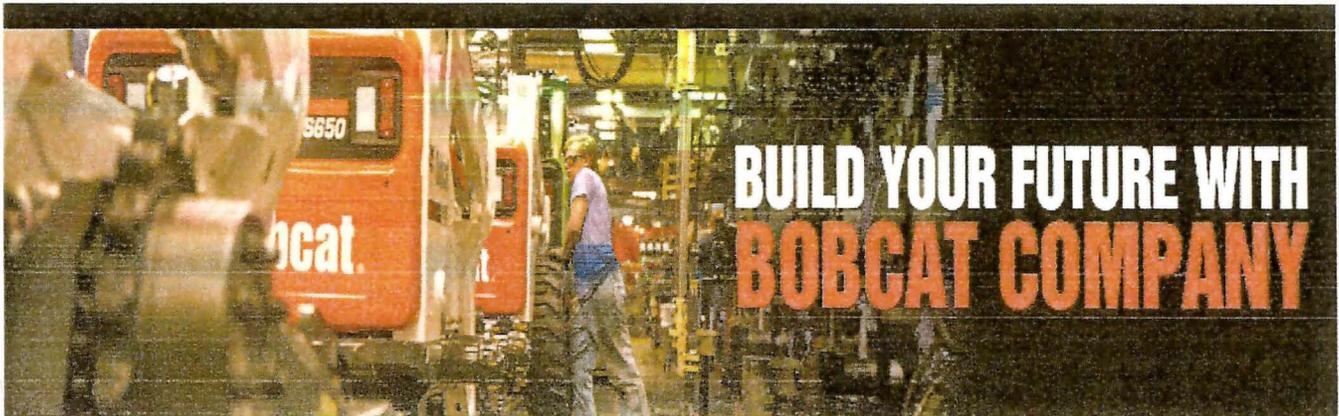
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SB2279
Handout #9
3-23-15

(http://www.bobcat.com)

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MULTIPLE OPENINGS ON ALL SHIFTS

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- Assembles product, partially or completely, positioning parts according to knowledge of unit being assembled or following blueprints, diagrams, layouts or oral instruction.
- Ability to read build sheets and blueprints

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- Operates industrial truck equipment with lifting devices to push, pull, lift, stack, tier or move products, equipment and material in warehouse, storage yard or factory.
- Supplies the assembly lines with the materials needed to perform their job.
- Successful completion of a forklift safety class, written forklift operation test and an eye exam to check for peripheral vision is required.
- Must possess a valid driver's license.

Welder

- Weld metal components of products as specified by layout, blueprints, diagrams, work orders, weld procedures or oral instructions, using electric arc-welding equipment.

Fabrication Operator

- Sets up and operates power press and assists in the operation of fabrication equipment (brake, shear & lasers) to trim, punch, shape, notch, draw or crimp metal components according to specifications.

NECESSARY QUALIFICATIONS:

Basic job standard: Must be able to read and receive instructions in English.

Knowledge, Skills, and Abilities: Must be able to follow established methods and procedures and perform work accordingly. Must have the ability to work rapidly and under time pressure for extended periods of time in order to meet build requirements.

Must possess basic machining knowledge and the ability to read build sheets and blueprints.

Education, Training, and Experience: The ability to communicate with supervisors and fellow workers in both written and verbal forms at a level normally acquired through the completion of high school or equivalent is required. Job specific skills, techniques and safe work and equipment operating practices are learned through on-the-job and classroom training. General instructions are given on recurring duties, operations or assignments; detailed instructions are given on new duties, operations or assignments.

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2

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3

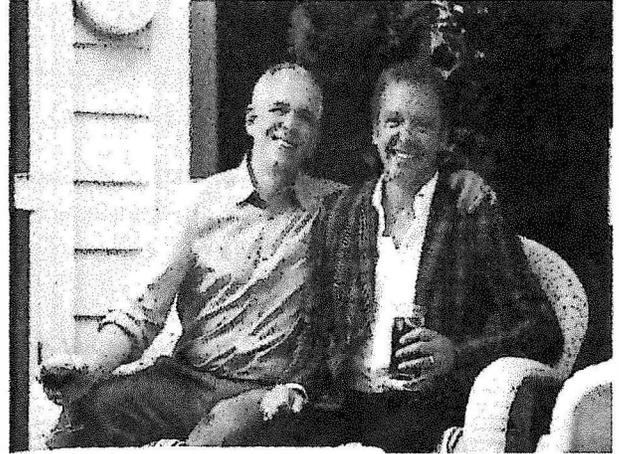
SB2279
#10
3-23-15

Bernie Erickson, Fargo ND

Today you will most likely hear from a number of individuals and organizations who have a very strong point of view on SB2279.

You will probably hear from some pro-family organizations who believe the best way to support North Dakota families is to make life unpleasant for those headed by same gender couples or to continually remind them they are inferior to other families.

You're probably going to hear from religious organizations who preach a doctrine of love, which typically boils down to "Love the sinner; hate everything about them."



David & Bernie

You may even hear from someone who worries there could be a baker or photographer somewhere forced to provide goods and services to a gay couple.

Now, you're going to hear from a man who is married to another man. And you're going to hear why I believe David and I should not be excluded from equal protection in employment or fair housing laws simply because we love each other.

David is a college professor of vocal music, General Director of the FM Opera, and owns a small stained glass business where he teaches classes and builds stained glass lamps and windows. I am a former department store manager, having managed Marshall Field's stores here in Bismarck as well as Fargo and Grand Forks. I retired as a Vice President, General Manager of Macy's West Acres a few years ago and currently sell residential real estate at Park Company Realtors.

David and I have spent our lives enriching the lives of those around us and the community in which we live, yet at every turn, the state of North Dakota tells us because we love each other, we are inferior to other citizens. That needs to stop.

From marriage equality to fair housing and fair employment, we are considered inferior to other North Dakotans. I'm not really sure what more we can do to demonstrate we bring value to ND and should benefit from ND laws just like everyone else.

There is a concern that adding GLBT individuals to the fair housing and employment laws would create some kind of special class to receive special protection.

The opposite is true.

Right now, we have fantastic employment laws that apply to all North Dakotans. Except the GLBT ones.

Our fair housing laws are amongst the best in the nation. Unless you're a GLBT North Dakotan. Then you are singled out and given special treatment.

If you really want to single out GLBT for special treatment, give us a 10% reduction in our state taxes or let us be exempt from speed limit laws.

Don't make us exempt from equal employment and fair housing protection.

"There's no discrimination in North Dakota!" is heard time and again, yet that provides little assurance to someone thinking of building a life in ND.

I have not been affected by domestic violence or human trafficking, nor have I lost a child to a drunk driver. In fact, I don't believe I personally know anyone who has. However, I don't think one needs to be beaten, raped, or lose a child to a drunk driver before their point of view on a serious topic is worthy of consideration.

GLBT individuals are not victims. We are not looking for any kind of special treatment. We are asking to be treated with dignity and respect, just like everybody else and that the special class that has been created for us be eliminated.

This is the third time this type of legislation has been introduced here in ND. The first two times it was voted down, I was disappointed our legislature is willing to look the other way in terms of discrimination.

If this is voted down yet again, I think that's going to change my point of view from our legislature tolerating discrimination, to our elected officials actually encouraging discrimination.

I would really appreciate your consideration and support. Discrimination is not a North Dakota value.

David's perspective: David Hamilton #11

Grew up in South. Remembers 'whites only' water fountains and bus depot doors labeled "Whites" and "Colored" As a child, didn't understand why because family and church didn't teach discrimination.

As an adult, seeing something similar here, too. The same, yet separate and not quite equal provisions made for GLBT. The special treatment provided by ND Tax Commissioner.

Role as a college educator, damaged students and their growth into emotionally and spiritually healthy individuals who eventually leave never to return.

Grateful parents who share their thanks for setting an example that GLBT people can not only find acceptance, they can find a lifelong loving relationship and achieve all their dreams. It's just easier if you don't live in ND.

We could arrive at home today and find an eviction notice and pink slips from our employers that since they learned we're gay, we are required to leave, and the state of North Dakota will stand holding the door open.

Why is anyone in this room okay with that?

SB2279
#12
3-23-15

Chairman Weisz and members of the House Human Services committee, my name is Faye Seidler and I'd like to share a little of my story. I'm a transgender woman who was born and raised in Fargo, North Dakota. My father and mother were hard workers, who taught me how to be a hard worker and taught me to give it my all in everything I do.

When I started at Sanford Health, in January of last year, that held true. I impressed people with how quickly I learned and how much work I did. I was always volunteering to stay late when it was busy and when I had finished my work, I would help other people finish theirs. It was the first job I felt could be a career and I loved working there and helping people. But that dream fell short because I happened to be Transgender and the discrimination and hostility I faced made my situation and continual employment there unbearable.

I was intimidated and interrogated about my gender before I transitioned and afterwards my coat was vandalized, my private social media posts were photocopied and used to punish me. When I sent an email out asking people to help make sure everyone used the correct pronouns for me, I was call disruptive and was compared to a promiscuous heterosexual and it was implied that I didn't want to come to work to work, when in reality that's all I wanted to do, but it was impossible when I was constantly invalidated and made to feel less, every single shift.

When I ask that people be educated about my condition, I was told that would be the same as educating people about someone's religious identity, specifically the same as teaching the Muslim religion.

Every day I had to change in the emergency shower room, right before the elevator to our department. Every day I had to be othered to everyone else and seen as different, regardless of my legal documents all being female since November. What Sanford didn't understand was while someone can leave their religion or sexuality at the door, I can't stop being a woman at work or anywhere, because it is who I am.

My last day was Friday, March 20th, 2015 and as of that day, Sanford Health, one of the largest job providers in our state, with over twenty two thousand employees, will have exactly 0 openly transgender people. The population statistic for transgender people is between 2 percent on the low end to 5 percent on the high end. This means that statistically Sanford should have nearly 400 transgender workers, not zero. If my experiences weren't a testament of the hostility of the place, then hopefully that number will be.

But what does this matter? Well Sanford Health is one of our largest job providers and there are thousand upon thousands of transgender people across the country that will not come to North Dakota, will not come to Sanford as technicians, or nurses, or doctors, because they want a place they are protected, a place that has that protection in their policy and practice.

But not only that, Sanford Health is a major hospital in our area and one of the few local places transgender people can get treatment. Treatment that can bring in thousands of dollars per individual over the years, but I know many transgender people who go to the twin cities to get their medication, to get their tests, and see

their doctors. They would rather drive two hundred and fifty miles, than go to Sanford.

In my final conversation with Human Resources, I told them that I wasn't being treated equally, that I was being discriminated, and they needed clear language in their policy. They told me they don't legally have to do that and our conversation ended. They effectively told me the only way they would change is through legal action and that is exactly why I am here today, testifying in support of SB 2279, because this is needed and important. Mr. Chairman and members of the committee, thank you for listening to my story and I welcome any questions you may have.

Trans Oriented Supporting Arguments for SB 2279 - Faye Seidler

No reported cases of harassment: there has been no reported case of a transgender woman harassing a cisgender woman in the bathroom.

in 12 States between fifteen to a few years without issue: 12 States have Colorado, Connecticut, Hawaii, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Vermont.

Toni Troop, spokeswoman for the statewide sexual assault victims organization Jane Doe Inc., told *Equality Matters* in an email:

The argument that providing transgender rights will result in an increase of sexual violence against women or men in public bathrooms is beyond specious. The only people at risk are the transgender men and women whose rights to self-determination, dignity and freedom of violence are too often denied. We have not heard of any problems since the passage of the law in Massachusetts in 2011, nor do we expect this to be a problem. While cases of stranger rape and sexual violence occur, sexual violence is most often perpetrated by someone known to the victim and not a stranger in the bush or the bathroom. [Email exchange, 3/7/14, emphasis added]

Source:

<http://equalitymatters.org/factcheck/201403200001>

<http://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>

Isn't special treatment

It isn't special treatment, it is the same rights cisgender women already experience. It doesn't trump their rights, because any behavior of discrimination or harassment still applies

Transgender Identity is Supported By:

The American Psychological Association (APA)

The American Medical Association

World of Professional Association for Transgender Health (WPATH)

We are treated by professional, medically train, doctors

And there is strong neuroscience evidence to support the condition

Source: (http://www.transadvocate.com/gender-orientation-intersex-conditions-within-the-transsexual-brain_n_8879.htm)

Born a woman/man

Looking at Intersex people, it is obvious that sex is a spectrum. We are not born men or women, we are assigned that by doctors as the best guess to what our biological sex is and sometimes it is correct and other times it isn't.

Source: (<http://www.isna.org/>)

Asking about Genitals is a violation of HIPAA

HIPAA is the federal Health Insurance Portability and Accountability Act of 1996. The primary goal of the law is to make it easier for people to keep health insurance, protect the confidentiality and security of healthcare information and help the healthcare industry control administrative costs.

FAQ

Did you "choose" this "lifestyle"?

Thank you for your question and I think that is an important one to address. The fact is that being a woman is not a lifestyle choice for me, it is who I am. A fact supported not only by my personal doctor, but also by the American Medical Association and American Psychiatric Association, a collaborative of highly trained and educated doctors and evidence by neuroscientists that being transgender is a biological condition.

At the end of the day, aren't trans people protected by the same laws that protect against gender discrimination? Why do you need "special rights"?

Great question and I can tell you that transgender people are not protected by the laws that affect discrimination, with the exception of the federal protection under the Title Seven of the Civil Rights Act and the Affordable Care Act. But this only provides protection to business with more than fifteen people and hospitals.

Locally I could be fired from a business of ten people, solely on the fact I'm trans, regardless of the amount or quality of the work I put in. I can be evicted from my home for the same reason.

Which means we don't have the basic rights entitled to everyone, and we don't want special rights, we want simply the right to exist as we are and be judged by the quality of our work and character, instead of things that don't affect that nor can we change.

Since when are there trans people in North Dakota?

That is a fantastic question and I'd like to tell you that the statistics for transgender people in the population, as expressed by transgenderlaw.org is between 2 percent on the low end and 5 percent on the high end. Transgender people have always been in North Dakota, but they've been afraid to be open about it, because of the discrimination they face.

Historically also, we find that transgender identities have existed in many cultures across thousands of years.

Some states are allowing transgender teens to play for the sports team of the gender they're transitioning toward. How do you feel about that?

This is a fantastic question, that deserves intelligent discussion.

Before I address it, it should be understood that being a transgender youth is very difficult, as they experience greater risk of harassment, bullying, and suicide. As such, it is very unlikely anyone would pretend to be another gender for advantage.

The second thing to understand is that many transgender youth are getting hormone blockers, to prevent the harmful effects of the wrong hormones would have on their body.

This means it is both very hard to come out and there often isn't an advantage for transgender athletes.

But what really matters here is sports is a way for us to feel connected at school, to

find a group of peers that we can have fun and work as a team and develop all sorts of beneficial skills in addition to working out. Many people define sports as being integral to their self-esteem growing up and throughout life. So of course transgender youth want to be involved in that, but they want to be involved with the peers they feel comfortable with.

Imagine if your son or daughter was forced to play for the girls or boys team respectively. That they were made fun of everyday, singled out, and teased. That they couldn't develop strong friendships and community with their own gender. That would be how it is every day for a transgender athlete forced to play with the gender they were assigned at birth, and not the one they identify as.

I think we can agree that winning is a big part of sports, but social bonding and development for youth is much bigger and more important component and transgender youth should have the possibility to explore it, safely and be accepted for who they are.

Do you think boys should be able to shower with my daughters at school?

That is a leading and insensitive question, which you may be surprised to learn I don't disagree with. I don't think cisgender males should use the female shower room and I think it would be a violation of the privacy given to females.

What you need to understand, however, is transgender women are women. Who use the shower room to shower and the bathroom to pee. In thirteen states that have allowed transgender people the right to use the facility of the gender they identify as, there has not been a single reported problem and these laws have been in effect between a couple of years to decades.

And it should be noted that this doesn't give transgender people special protection, as any harassment laws will still apply. The thing to know is that simply existing in there as being a trans woman isn't harassment, saying it is, is the same as saying a woman of color is harassing white women by using the female locker room. The same as saying a woman with a disability is harassing abled people for being in there. We are all just women first and those other labels come second.

What is there to stop a guy from hanging around in women's bathrooms if we change our laws?

What is to stop a guy from hanging around a women's bathroom if we don't change our laws? We can't stop individual behavior, but the point of laws is to protect our freedom, dignity, and agency by not taking away our freedom, but by punishing behaviors that diminish that.

And to repeat my previous point, this law doesn't affect harassment laws in any way. If the person you are referring is a trans woman, they have the right to be there, the same as a non-trans woman as long as they want. But if they are there for a reason not associated with the restroom or the safe space it provides, then they should be punished accordingly. But again, I'll remind you that a transgender person has never harassed a non-transgender person in the bathrooms. It isn't a problem.

SB2279
#13
3-23-15

**Testimony of Kristen E. Benson, Ph.D. before the House Human Services Committee
Monday, March 23, 2015**

Good morning Chairperson Weisz and members of the House Human Services Committee. My name is Kristen Benson and I am here today to ask that you vote yes on SB 2279.

I'm not originally from North Dakota. In fact, I had never set foot in the state prior to my job interview at one of your prestigious universities. When I was first recruited to apply for a position here, I was hesitant. I didn't know if I was willing to move to a state where I would not have basic protections. Fortunately, I could afford to purchase my own house, so I didn't have to be concerned about being kicked out of my home. I accepted a position at an institution that implemented policies that clearly prohibits discrimination based on sexual orientation or gender identity. If it weren't for these policies, I am certain that I would not have chosen to move to North Dakota. I have witnessed first hand the ways that these discriminatory laws have impacted our ability to recruit the best and brightest new professionals. While I have come to love North Dakota, it is even more concerning watching talented young people move away because they feel their home state does not value them.

In my work as a marriage and family therapist and supervisor, I have the opportunity to meet and be familiar with many individuals, couples, and families who live in North Dakota. I am fortunate to be able to hear their stories and perhaps share some of their experiences that they're unable to share with you themselves because of fear of retribution by the very issues that SB 2279 would protect. I have heard the argument that LGBT discrimination isn't an issue in North Dakota, that these concerns are not really valid concerns. Without basic protections, people face a real risk of being fired from their jobs and losing their housing, and for many it has already happened to them. But they have no recourse because we do not keep track of concerns that do not violate the law. Can you imagine being fired from your position and no longer having an income to support your family simply because your boss found out about who your husband or wife is? By allowing discriminatory laws to exist, we force families who are able to work into unemployment, forcing them to rely on state resources. Discrimination costs North Dakota

I earned my PhD in Human Development from Virginia Tech where I began my primary area of research focused on understanding the experiences of LGBT families and those who have a transgender family member. Most recently I've interviewed parents who are raising a transgender child. It is quite heartbreaking to hear mothers talk about the fears that they hold. Take for example the 9 year old transgender girl who won't eat or drink throughout the day because she doesn't want to face being harassed for using a men's public restroom. Consider the consequences of starving a developing body and developing brain. Consider the consequences for her learning. So it's true that children are at risk when we talk about gender and bathroom access, but not for the reasons that some may want you to believe. I will also share a story with you about my colleague who is a young transgender man, and was encouraged by his doctor to undergo hormone therapy. At this point he has developed a full beard, yet according to current law, he is supposed to use the women's restroom. Quite frankly, many transgender people would actually prefer to use a single stall restroom, but many of our public buildings are not accommodating in this way. My colleague presents as a man, but when he is in a public place without single stalls he asks other men to go look inside the restroom to ensure that he will be

safe from harassment. He and other transgender people want to use the restroom for the same reasons you and I do. They have to pee. They just want to safely use the restroom.

While inaccurate portrayals of transgender people tend to be voiced during legislative efforts such as this one, I can attest that they are grounded in false assumptions. I have heard the misguided statements that reflect transgender people as predatory, which is statistically wrong; rather, transgender people are more likely to be the victims of violent crimes and other forms of discrimination. Many remain silent about their identities out of concern for physical safety and discrimination, yet there are transgender identified people who are model citizens in our communities. The transgender people I personally know in North Dakota have served in our military. They work with the homeless. They are farmers. They are educators. They are students in our universities. They are members of our faith communities. They are our relatives and friends. Yet they are legally discriminated against because of who they are.

Research on LGBT people clearly states that gender identity and sexual orientation cannot be changed. In fact, there is no scientific evidence that support that a persons gender identity or sexual orientation can be changed. Further, major medical, education, and mental health associations have issued statements that interventions to change identity do not work. (See attachment for list of professional organizations). Research has overwhelmingly shown that conversion efforts lead to higher rates of depression, substance use, and suicide. "Homosexuality" was removed from the American Psychiatric Associations *Diagnostic Statical Manual (DSM)* in 1973, and Gender Identity Disorder was removed from the most recent version of the *DSM-V*. A person's LGBT identity is not a disorder therefore there is no medical basis to treat them. The risk factors LGBT people face are due to discriminatory treatment and lack of acceptance. Gender identity and sexual orientation are not choices; therefore people need to be protected from unfair employment termination and eviction. LGBT people live in North Dakota. They work in North Dakota. And they will continue to do so. We now must decide if WE CHOOSE to continue treating people as second class citizens.

I urge you to show your value for the livelihood of all North Dakotans by supporting SB 2279.

Thank you for your consideration.

Kristen Benson, 1213 7th St. N, Fargo

Professional Organizations with Statements Against the Practice of Conversion Therapy

- American Academy of Pediatrics
- American Association for Marriage and Family Therapy
- American Counseling Association
- American Federation of Teachers
- American Medical Association
- American Psychiatric Association
- American Psychological Association
- American School Health Association
- National Association of School Psychologists
- National Association of Social Workers
- National Association of Secondary School Principals
- National Education Association
- Pan American Health Organization

Good morning Chairman Weisz and members of the Human Services Committee.

My name is Andrea Rebsom. I was born in Dickinson, graduated from Trinity High School, received my Bachelor's degree from Dickinson State University, and now I am an Accountant at KLJ Engineering here in Bismarck.

I am here to tell you about an incident where I was harassed and threatened by a co-worker. My story takes place in Dickinson four years ago while I was a student at DSU. Before I begin, I want to point out that I am not going to disclose specific names of the Manufacturing Company I worked for or the individual involved in my speech. I will use the terms, "Manufacturing Company" and, "John Smith." In 2011, John Smith started working at the same Manufacturing Company as myself. At that point, I had been with the Manufacturing Company for almost 15 years. We often worked 12-hour weekend shifts in close proximity to each other. While John was not the type of person I would associate with outside of work when he sent me a Facebook friend request on June 12, I accepted because I did not want to cause problems at work, and I was trying to be respectful to a fellow co-worker.

Shortly after John and I became Facebook friends I wrote a Facebook post to Dakota Outright, a local support group for the LGBTQ community here in Bismarck. In the Facebook post I notified Dakota Outright that our University club wanted to donate the proceeds from our next fundraiser to their organization. I included my email address in the Facebook post so someone from Dakota Outright could contact me.

After this Facebook posting, that exposed my support of the LGBTQ community, John stopped talking to me at work and the harassment and threats began.

The first incident occurred on December 18th when I received an anonymous gift bag at work. The gift bag had a picture of a snowman on it and with the Holidays closely approaching, I thought it was a Christmas present from one of my co-workers. When I looked inside the gift bag, I found these disturbing and provocative items.

The gift bag contained: (Take each item out of the bag.)

1. An Old Spice for Men shower and shave kit,
2. A shot glass with breasts inside of the glass,
3. A wind up breast toy,
4. After pussy dinner mints,
5. A doodling pad depicting a picture of a naked woman,
6. And a stripper toothbrush.

I had suspected the gift bag had come from John and when I had confirmation from another co-worker that it was John, I met with the company's Human Resources department. And when John was confronted about it by the HR department, he denied giving me the gift bag. While HR said the gifts were not appropriate, they stated there was nothing they could do about it. The attitude from Human Resources was to drop the issue and get back to work-which I did.

A few days later, on the morning of Christmas Eve, the second incident of harassment occurred. Within roughly one hour, I received 11 threatening and harassing emails from John who I realized had obtained my email address from the Facebook post on the Dakota Outright Facebook page. John used several different email addresses to try and hide his identity, but one of the emails was accidentally sent using his actual email address which exposed his full name.

I immediately made copies of all the emails and went with my Sister, who was home for the Holidays, to the Police station for the first time to file a report and a disorderly conduct charge against John. It was Christmas Eve and I remember my Mom cooking our Holiday dinner with tears in her eyes.

I have included a copy of the Police report and 11 emails sent to me along with my testimony. One of which is a picture John had found on the internet of me receiving an award from DSU. John had cropped my face out, put me in a KKK outfit, and posted this picture all over the internet. Please take a moment to look at them. (Pause for 30 seconds to let them look at the emails.)

The following morning of Tuesday, December 27th, I called the Manufacturing Company and asked to speak with members of the HR department. A meeting was set up where I gave them copies of all the emails I received along with the Police report. The HR department responded with the same casual mentality they showed regarding the gift bag. It was happening outside of work premise so no further action needed to be taken.

Around 3 p.m. on that same day, I noticed an email sent by John of a link to a YouTube animated video entitled, "King Assassination."

The first image was a cartoon drawing of Martin Luther King stating, "I have a dream." The second image was of a gunman stating, "Yeah, well I have a little dream of my own buddy boy, only difference is my dream came true." Suddenly you hear the sound of a gunshot with people laughing hysterically in the background. I immediately called the HR department back at work and informed them of this new email I had received.

(If possible, play video HERE.)

Terrified, I then went to the Police station again to show them the new email I received of the assassination video.

The next morning around 10:30 am, members of the Manufacturing Company's HR Department called me. They informed me they would give John a written warning due to the emails he sent me. I immediately began to cry and told the HR department I was terrified to work with John, particularly because of the last email I received of the assassination video.

The Manufacturing Company told me that because these incidents did not happen on work premise and because homosexuals are not a protected class, giving John a written warning was all that could be done.

The HR department also told me that if they fired John, he could come back and sue them for wrongful termination. The Manufacturing Company chose John, a less than one year employee with a criminal background over me, a dedicated and hard-working employee who was close to reaching her 15th year of employment.

In North Dakota, because employers are simply following the law and not being pro-active in their discrimination policies, an individual can essentially threaten to kill somebody because of who they love or who they support and not get fired.

I told the Manufacturing Company that as a result of their inaction, I would have to quit my job without giving any notice because I was fearful to work with John again. I was told by the HR department I would receive a call later that day from them confirming my decision to quit. I then called the Police Officer I was working with and informed him that as a result of how the Manufacturing Company chose to deal with the harassment, I would be quitting my job.

Without my knowledge, the Police Officer called the HR Department and informed them of the severity of the situation. Approximately four hours later, the HR Department called and stated that I would never have to worry about working with John again.

I also filed a restraining order against John and a copy is included with my testimony stating his real name.

John was fired not because of what he did to me, but because the Manufacturing Company knew that if they did not fire him, it would give them a bad reputation.

After earning my Accounting degree from DSU, I received a temporary job with the Federal Highway Administration here in Bismarck where discrimination of any kind is not tolerated and I quickly moved out of Dickinson.

In conclusion, I would like to state that this story is no longer about me. I am safe. My family is safe. And I have a good job now. The evil and hatred that was trying to come out of this story did not prevail, but it was not easy. I had a loving and supportive Family who told me we were not going to let this ruin our Christmas. Not all people have this kind of support. This could have potentially resulted in the worst tragedy of them all – a human life.

The person who harassed me not only belittled people based upon who they love, but also people based upon the color of their skin and their religious beliefs. The latter two are offered protections by the law. By not offering these same protections to the LGBTQ community, that is discrimination and it's wrong-no matter who it is directed towards.

The evil and hatred did not prevail because I was hoping to one day share my story for the greater good of society. Today is that day. Most companies will not be proactive in there discrimination policies unless laws are passed prohibiting this type of behavior. My story put a disturbing face on discrimination. And in the end it's all the same. And in the end we are only hurting this great state of North Dakota by not giving a do pass recommendation to Senate Bill 2279.

Thank you.

Andrea Rebsom

From: "Scabby Kenny" <scabby.kenny@gmail.com>
To: <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 7:11 AM
Attach: klansman.jpg
Subject: When did you become a member of the KKK?



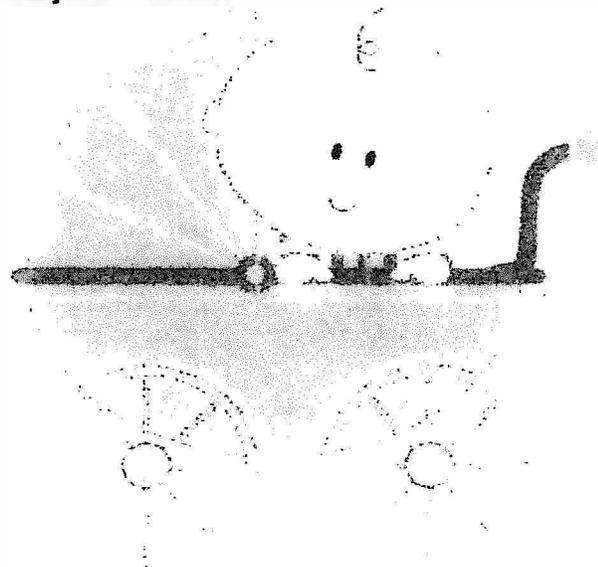
Andrea Rebsom

From: "Lester Rees" <retselseer@yahoo.co.uk>
To: <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 7:25 AM
Attach: klansman.jpg
Subject: Since when did you join the KKK?



Andrea Rebsom

From: "Mommy Gene 666" <mommy.gene.666@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 7:32 AM
Attach: fruits.jpg
Subject: fruits...



The fruit of a straight couple.

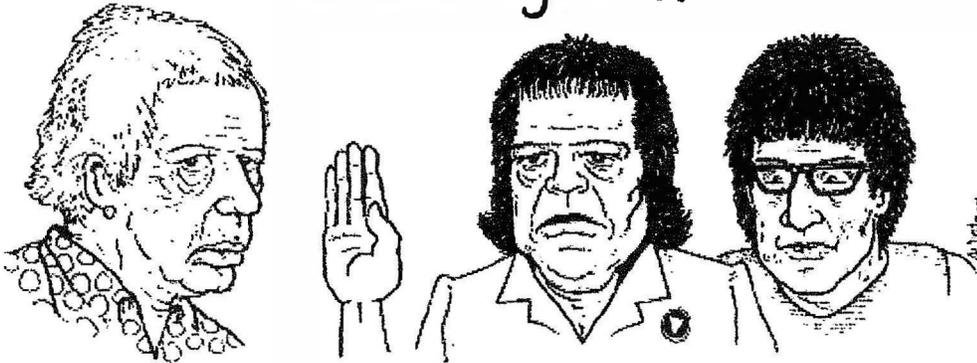


The fruit of a fag couple.

Andrea Rebsom

From: "Bushnest" <bushnest@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 7:51 AM
Subject: Grotesque Dyke...

Jesus!... If Clinton keeps it up,
every grotesque Dyke on planet
earth will have a key appointment
in Washington...



Andrea Rebsom

From: "Mommy Gene 666" <mommy.gene.666@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 7:52 AM
Subject: What's the difference...

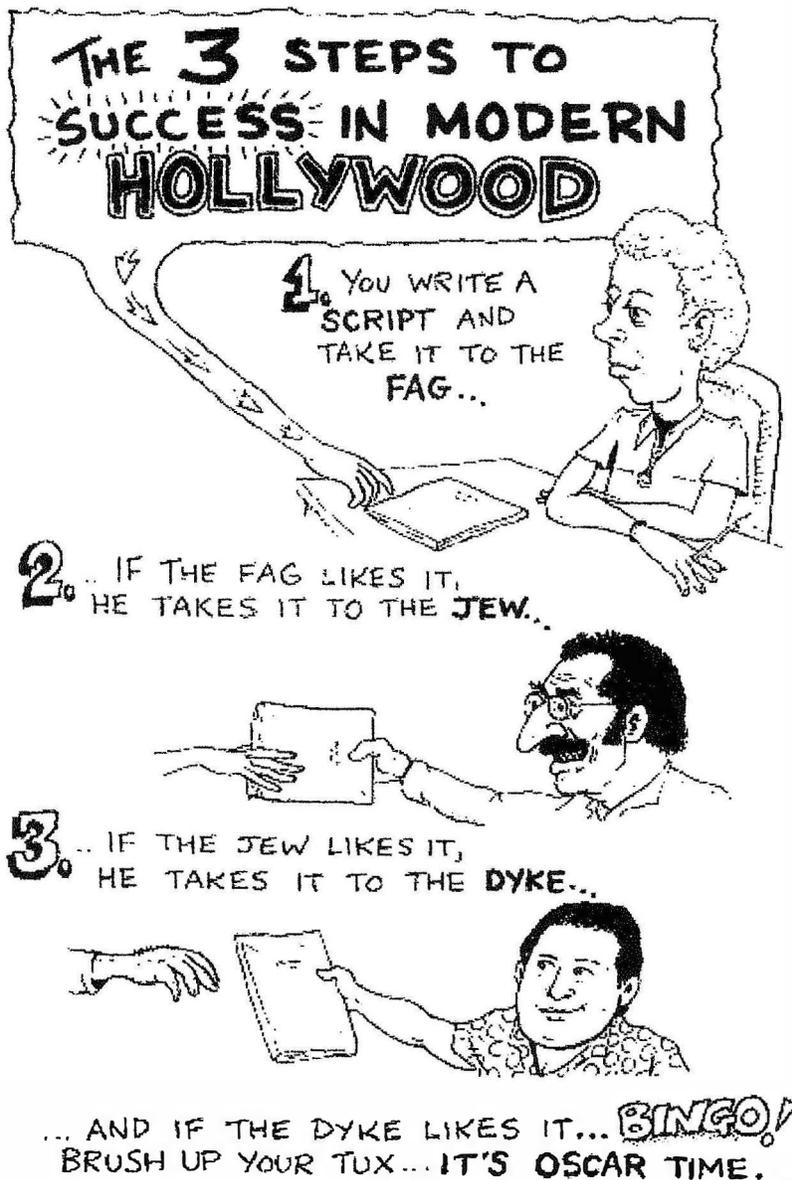
**WHAT'S THE DIFFERENCE
BETWEEN A HIPPOPOTAMUS...
AND A BULLDYKE ?**



**... 20 POUNDS AND A FLANNEL
SHIRT.**

Andrea Rebsom

From: "Mommy Gene 666" <mommy.gene.666@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 8:10 AM
Attach: fags_image05.jpg
Subject: 3 Steps...



Andrea Rebsom

From: "Bushnest" <bushnest@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 8:12 AM
Subject: fags_image03.jpg 500x545 pixels

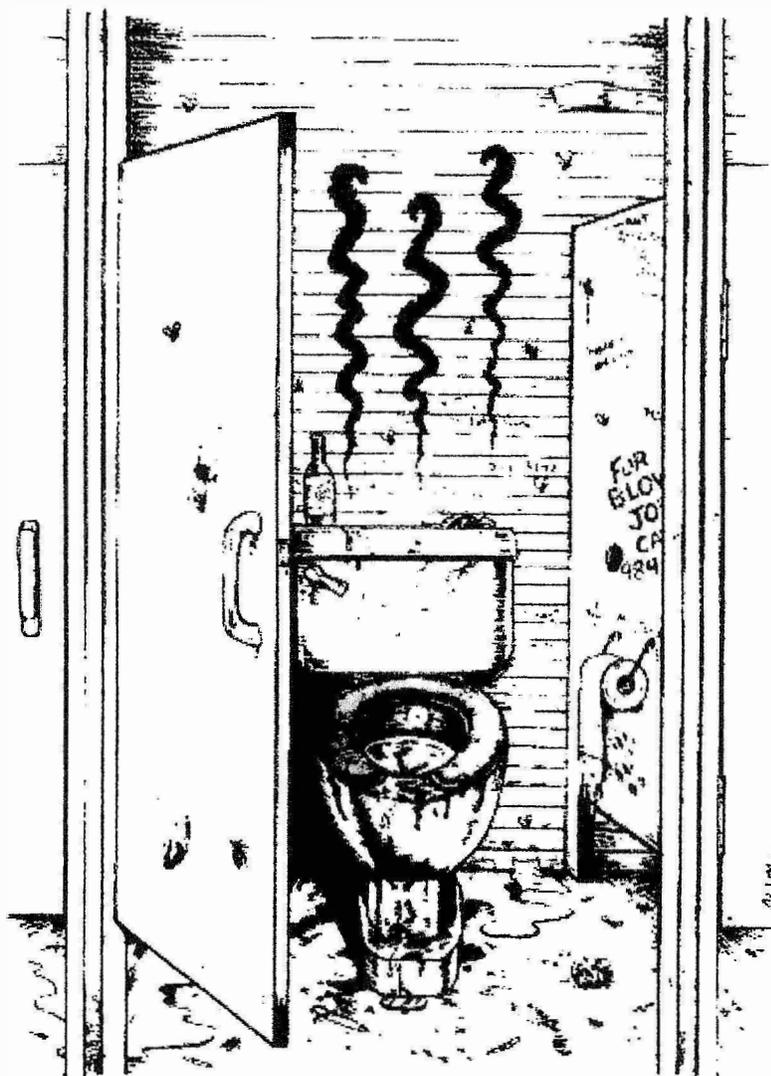
LET'S FACE IT... MOVIES ARE
GETTING MORE PONDEROUS,
PRETENTIOUS AND PERVERSE
EVERY DAY... IT'S GETTING HARDER
AND HARDER TO RELATE TO THEIR
ABSTRACT THEMES AND CHARACTERS...
EVER WONDER WHY?



LET'S TAKE A LOOK AT WHO
RUNS THE FILM INDUSTRY...
IT'S JUST QUEERS, JEWS
AND QUEER JEWS...
ANY QUESTIONS?

Andrea Rebsom

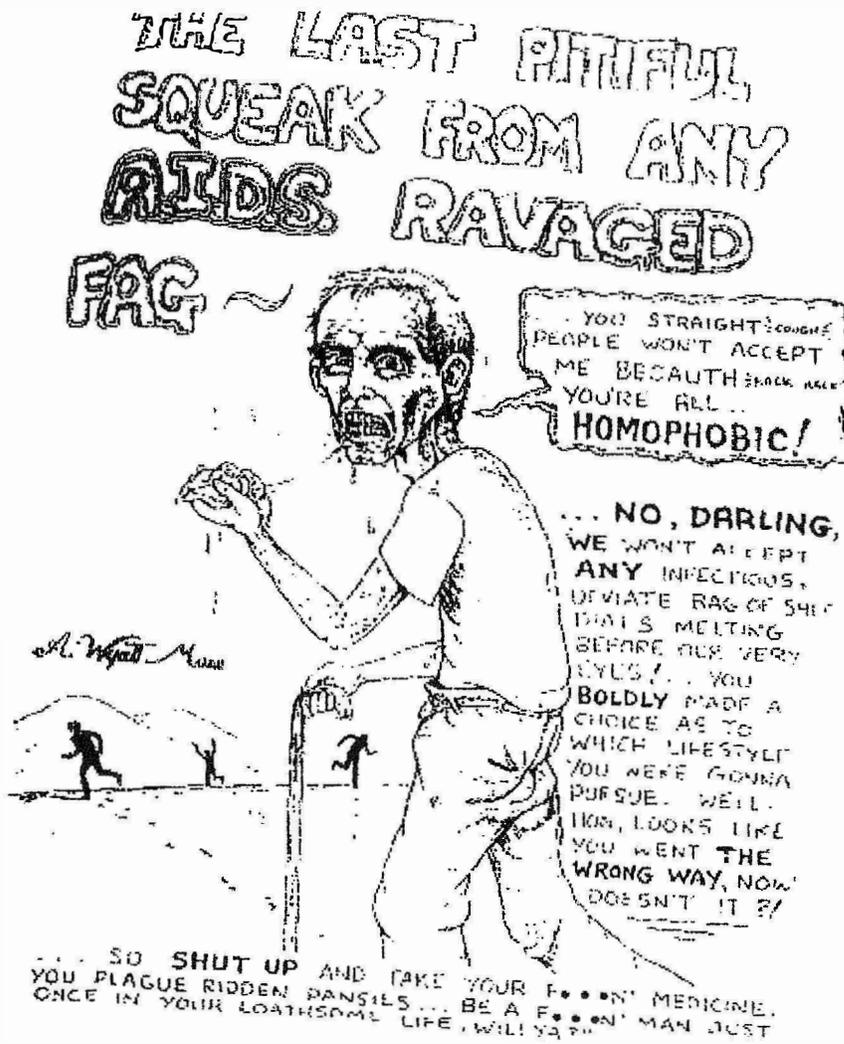
From: "Scabby Kenny" <scabby.kenny@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 8:14 AM
Subject: Homosexual Love Nest...



**HOMOSEXUAL
LOVE NEST**

Andrea Rebsom

From: "Scabby Kenny" <scabby.kenny@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 8:15 AM
Subject: Last Pitiful Squeak...



Andrea Rebsom

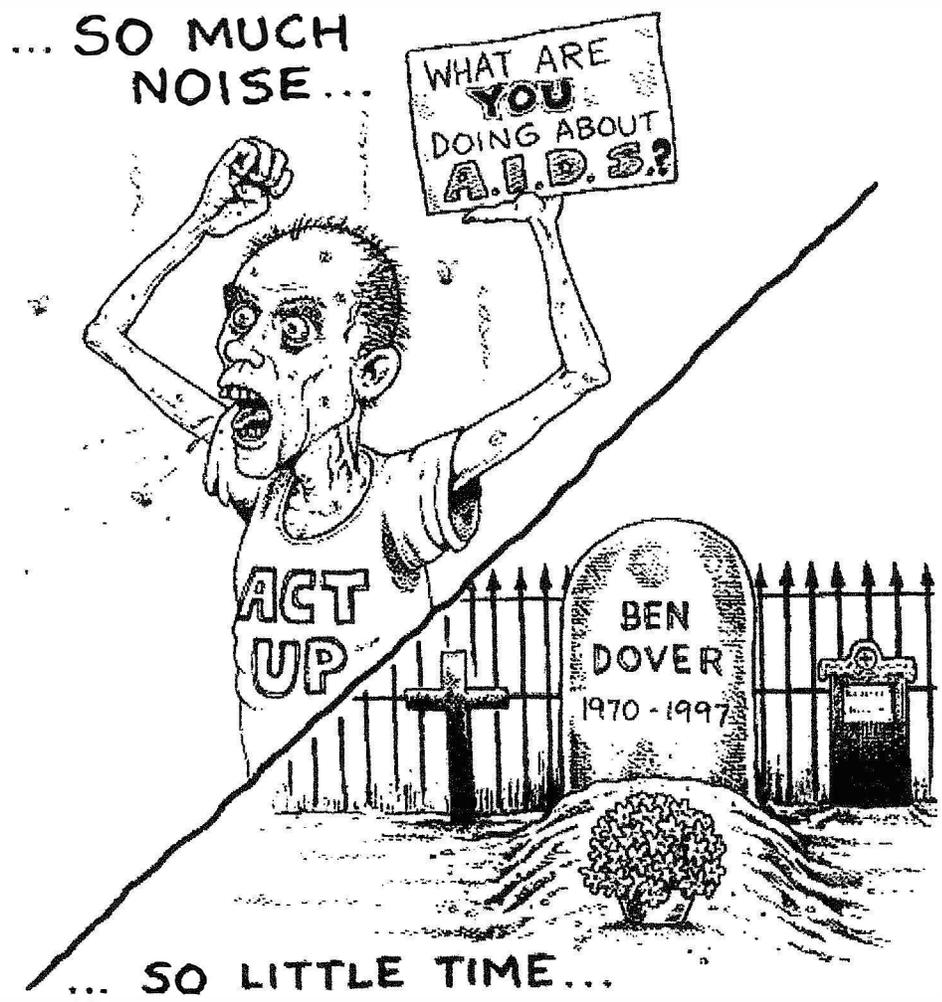
From: "Scabby Kenny" <scabby.kenny@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 8:32 AM
Subject: The Herd is Thinning...



The Herd is Thinning...
The Plague is Winning,
The Queers Heard here...
Won't last the Year.

Andrea Rebsom

From: "Mommy Gene 666" <mommy.gene.666@gmail.com>
To: "Andrea Rebsom" <arebsom@ndsupernet.com>
Sent: Saturday, December 24, 2011 8:34 AM
Subject: So Much Noise...



... SO MUCH NOISE ...

... SO LITTLE TIME ...

WHY DON'T ALL THOSE
"BUBONIC BUTT-BLASTERS"
JUST SAVE THEIR STRENGTH?

STATE OF NORTH DAKOTA
Disorderly Conduct Restraining Order
UCIS Revised (06/07)

FILED

FEB 14 2012

DISTRICT COURT, STARK CO.

STATE OF NORTH DAKOTA
COUNTY OF STARK

IN DISTRICT COURT
Case No. 45-2012-CV-00017

ANDREA L REBSOM

Petitioner(s),

vs.

DISORDERLY CONDUCT
RESTRAINING ORDER

LESTER E REES

Respondent(s),

To the above-named Respondent(s):

After a hearing on the petition, the court finds that the Temporary Disorderly Conduct Restraining Order should be extended.

You must immediately stop any Disorderly Conduct directed at the Petitioner. "Disorderly Conduct" means intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. Disorderly Conduct does not include constitutionally protected activity. Violation of this order is punishable by up to one year in jail and a fine of up to \$2,000.00.

You violate this order if you:

- Have any physical contact with or come within 1000 feet of the
Petitioner(s); wherever she may be.
- Call, write or have messages delivered to the Petitioner(s) through anyone other than your attorney, including via email;
- Enter or come within 1000 feet of the premises located at 129 2nd St E
- Dickinson ND 58601
- Take or damage any of Petitioners property or

STATE OF NORTH DAKOTA
COUNTY OF STARK

I hereby certify that the above and foregoing is a full, true and correct copy of the original as the same remains on file in my said Office
IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Court at Dickinson
The 14 day of February, 2012

By [Signature]
Clerk of the District Court
(Not Valid Without Seal Ink)



additional conditions are attached

You also violate this order if you stalk or otherwise follow the Petitioner(s). "Stalking" is also a separate criminal offense punishable, depending on the circumstances, as a Class A Misdemeanor or Class C felony (N.D.C.C. 12.1-17-07.1)

Any Peace Officer may arrest you with or without a warrant and take you into custody if the Peace Officer has probable cause to believe you have violated this order. It is further ordered that the clerk of court shall give a copy of this Order to the law enforcement agency which has jurisdiction over the Petitioner's residence. Consent by the Petitioner(s) to any contact or communication does not invalidate any provision of this order.

This order shall remain in full force until

14 Feb. 2014

Dated: 14 Feb. 2012

BY THE COURT:

Wayne Got
Judge/Judicial Referee of the District Court

SERVICE

() ADMISSION OF SERVICE

The Respondent admits service of this Disorderly Conduct Restraining Order.

Respondent

Date

Case Number 45-2012-CV-00017

Additional conditions of restraining/protection order.

You may not directly, or through third parties:

- 1. Access or use the personal web accounts of the petitioner on any internet site.**
- 2. Gain remote access or control of the personal computer of the petitioner through any Trojan-type setup or software or VNC**
- 3. Gain access to email of the petitioner through any setup which sends copies of any email sent by petitioner.**
- 4. Communicate with the petitioner by means of email.**
- 5. Use social media, including, but not limited to, Facebook, Myspace, Twitter, LinkedIn, Google+, Skype, Four Square, and blogs, to communicate or otherwise interact with petitioner online or observe petitioner's online presence.**
- 6. Use social media, including, but not limited to, Facebook, Myspace, Twitter, LinkedIn, Google+, Skype, Four Square, and blogs, to make comments about the petitioner or to perpetuate indirectly the harassment of petitioner through defamatory, retaliatory, or abusive social media communications.**

Date: 14 Feb. 2012

Wayne G. G. G.
District Judge/Judicial Referee



Dickinson Police

66 Museum Drive W

Dickinson, ND

Phone: (701) 456-7759 Fax: (701) 456-7680

Master Incident

Prepared on: 01/03/2012 13:03:02

Incident Information

Zone	:		Occurred From	:	12/24/2011 13:28:08
Case #	:	11-022430	Occurred To	:	12/24/2011 14:19:02
Master Incident #	:	110032049	Damage Amount	:	
Call Date/Time	:	12/24/2011 13:28:08	Reports Due	:	
Date/Time Finished	:	12/24/2011 14:19:02	Domestic Violence	:	No
CAD CFS	:	DISORD - DISORDERLY CONDUCT	Gun Permit	:	No
RMS CFS	:	DISORD - DISORDERLY CONDUCT	Juvenile Involved	:	No
Location	:	129 2 ST E DICKINSON ND 58601	Restraining Order	:	No
RMS Disposition	:	OPEN	RMS Disposition Date	:	12/25/2011 00:00:00
CAD Disposition	:	FINISH - NO FOLLOW-UP RPT	CAD Disposition Date	:	12/24/2011 14:19:02

Comments

Comment #	Date/Time	Officer Name
1	12/24/2011 16:40:38	415-LEE, COREY

Female came to the L.E.C. reporting harassment both at her place of employment and by email.

Crime Details

CFS Description	Att - Comp	CFS Code	State Statute
DISORDERLY CONDUCT	COMPLETED	DISORD	

Name Details

Name	Name #	Sex	DOB	Race	Address
REBSOM, ANDREA LYNN	A200806846	FEMALE	03/31/1975		129 2 E ST DICKINSON, ND 58601
Phone #	(701)260-1684				
SSN #					
Reason	: COMPLAINANT				

Name	Name #	Sex	DOB	Race	Address
REES, LESTER EUGENE	A201104346	MALE	12/23/1971	WHITE	7258 99 AV SW Mott, ND 58646
Phone #	(701)214-7689				
SSN #					
Reason	: SUSPECT				

Incident # : 11-022430

SB 2279
3-23-15

15

Good morning,

I am here to encourage you to vote for the inclusion of sexual orientation, as defined in Senate Bill 2279, into the North Dakota Fair Housing and North Dakota Human Rights Acts. It's about time that we include our GLBT friends in non-discrimination policies when it comes to housing and employment.

A little bit about me: I served 22 years in the military as an active duty Marine Corps Infantryman, and member of the North Dakota Army National Guard. I have deployed to 3 tours in combat. I am a member of the FMWF Chamber Military Affairs Committee. I am very involved in military organizations in the Fargo Moorhead area. (VFW, DAV, IAVA, Am. Legion) I am a past commander of the Fargo Legion Post #2. I am a service connected Combat Disabled Veteran. I am a recipient of the Bronze Star Medal for my actions in Iraq leading 100 North Dakota Soldiers in combat as the Units First Sergeant. I am a lifelong and 3rd generation resident of North Dakota, a graduate of the North Dakota University System, and have worked for the State for over 21 years. My Daughter just last week enlisted in the North Dakota Army National Guard.

With the repeal of the federal DADT policy 4 years ago, I believe that it is time that North Dakota gets with the program so that our returning veterans, who continue to serve honorably, will not come home from deployment and find an eviction notice at home, or go back to work and be fired shortly after returning.

A few years ago the Secretary of Defense signed a policy that gives same sex partners of military members' spousal benefits. The Federal Department of Labor does not allow discrimination based on sexual orientation meaning federal contractors that operate in the State of ND now have LGBT non-discrimination policies. While this is great, there is a problem. If an LGBT officer wants to live off post, they will no longer benefit from the Federal Dept. of Labor policies, and can face housing discrimination with no legal recourse in North Dakota. I know of members of the North Dakota National Guard who are affected by state policies.

This is also an image issue for the State. I work in Veterans employment and have been a consultant for the State Find the Good Life program. They have travelled to several military posts across the Nation in efforts to recruit Military members to come to North Dakota and work. What I found is that North Dakota has an image problem when it comes to social issues. Passing this bill will be a big step forward in showing that North Dakota is a welcoming place. I love North Dakota; I have served this State and its citizens for 30 years. I defend it all the time when I run into people with negative images of North Dakota. But I constantly struggle with the notion that North Dakota is not a welcoming state for LGBT individuals. Passing this nondiscrimination bill is vital if we are going to be welcoming to ALL who are seeking employment in our great state. I have the North Dakota State Flag that was presented to our unit prior to our deployment by then Governor John Hoeven hanging in my "Man Cave." We proudly hung this Flag in our command post in Iraq. I have a lot of pride in this State and hope that you will support ALL Veterans of this State

North Dakota State HRMS states that they do not follow EEOC policy for employment related to transgender employees, even though the State receives federal funding from the Federal DOL for

/

most of its workforce programs. North Dakota letterhead states that the state is an equal opportunity employer and program provider, but in reality, we just provide equal opportunity programs by following the Federal EEOC policy, but the state does not recognize the policy when it involves a State employee that is administering the program.

I have literally fought for a free America, I cannot sleep some nights because of the things that I have done and have witnessed in defense of this State and Nation, and it really frustrates me that some believe it is still OK, and should be legal, to discriminate against others just because of who they are.

If you do not pass this SB 2279, you are saying that it's ok for employers and property owners to discriminate against military members and their family, and against Veterans and their families. This is your chance to really support ALL Veterans. These are the people that have defended our freedom. Please do the right thing and recommend a "Do Pass" on this bill.

Thank you for your time.

Brad Aune
1SG (Ret)
US Marine, US Army, ND ARNG
Fargo, ND
701-212-6343

Statement of the American Civil Liberties Union of North Dakota

In Support of SB 2279 – To Add Sexual Orientation & Gender Identity to the North Dakota
Human Rights Act

House Human Services Committee

March 23, 2015

My name is Jennifer Cook and I am the Policy Director for the American Civil Liberties Union of North Dakota. I am also a born and raised North Dakotan. I have had the distinct honor and privilege to serve our country and state as an enlisted soldier and commissioned officer in the North Dakota Army National Guard for eight years. I am a graduate of the University of North Dakota's School of Law and a licensed attorney in North Dakota. I had the pleasure of serving as a judicial law clerk for a Magistrate Judge in the United States District Court for the District of North Dakota prior to becoming the ACLU of North Dakota's Policy Director in December of this past year.

It is with this background I rise to testify in support of Senate Bill 2279. The American Civil Liberties Union of North Dakota represents its members and activists throughout North Dakota who seek to preserve and expand individual freedoms and civil liberties guaranteed by the United States and North Dakota Constitutions. In that context, we appreciate the opportunity to support this bill, which would help protect more North Dakotans by adding "sexual orientation and gender identity" to North Dakota's nondiscrimination law. SB 2279 is an exceptionally important bill and one that is much needed.

Discrimination occurs in North Dakota

Evidence abounds that LGBT people continue to experience discrimination in employment, housing, and public accommodations, among other contexts. For example, a 2011 UCLA report determined that 27% of lesbian, gay, and bisexual people across the United States had experienced some form of sexual orientation discrimination in the workplace in the five years before they were surveyed, including 7% who had lost a job because of their sexual orientation, and that 78% of transgender people across the United States had experienced employment discrimination related to their gender identity in the preceding five years.¹ The data exists to support legislative findings that LGBT people are currently experiencing discrimination, which in turn form valid bases for legislation prohibiting such discrimination.

Now, I'll pause here to mention that there was a statement made prior to the Senate floor vote on 2279 that the Senate Judiciary Committee was presented with no evidence or data by supporters of the bill that discrimination against LGBT North Dakotans exists or occurs in this state. Arguably, that statement is true in the sense that there were no studies with North Dakota

¹BRAD SEARS & CHRISTY MALLORY, THE WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), *available at* <http://williamsinstitute.law.ucla.edu/research/workplace/documented-evidence-of-employment-discrimination-its-effects-on-lgbt-people>

specific data identified, nor were there North Dakota government or non-government agency documented statistics regarding reported complaints of discrimination based on sexual orientation or gender identity provided to the committee.

However, I ask you to recall the testimony of the North Dakotans you have heard here today and recognize that their stories of discrimination serve as evidence for the committee. Some may argue they are only a small representative sample of North Dakotans, but the question of whether discrimination against LGBT North Dakotans exists should not be answered by quantifying how much invidious discrimination is acceptable. Nor should there be some arbitrary requirement as to just how many LGBT North Dakotans, whether it be 5 or 500, must come forward to present evidence of discrimination until we as a state enact legal protections. In short, discrimination exists in North Dakota and it should not be tolerated by North Dakotans.

If the testimony of the North Dakota citizens you heard here today is not enough to establish evidence of discrimination in North Dakota, numerous courts and legal scholars have acknowledged and documented the history and patterns of discrimination against LGBT people in this country. Every state and federal court that has substantively considered whether sexual orientation classifications should be presumed to be suspect for purposes of equal protection analysis—whatever they decided on that ultimate question—has recognized that LGBT people have faced a long history of discrimination. For example, in 1995, the Sixth Circuit concluded, “Homosexuals have suffered a history of pervasive irrational and invidious discrimination in government and private employment, in political organization and in all facets of society in general, based on their sexual orientation.”

To date, at least twenty state and federal courts assessing whether classifications based on sexual orientation should receive heightened equal protection scrutiny under the federal or a state constitution have concluded, in more than two dozen judicial opinions, that LGBT people have faced a history of discrimination. Dozens of legal scholars have reached the same conclusion.

Additionally, in July 2011, the Ninth Circuit cited the history of discrimination against gay and lesbian people in its decision to lift its stay of a district court ruling that had held the military’s “Don’t Ask, Don’t Tell” policy of excluding openly gay service members unconstitutional under the First Amendment and the Due Process Clause of the U.S. Constitution.

In sum, there is demonstrable evidence that discrimination exists against LGBT people around the country. North Dakota is not immune from this discrimination, and therefore it is only reasonable to conclude it exists here as well.

Discrimination exists, but what can North Dakota do about it? North Dakota has the authority to pass and implement protections against discrimination

The Supreme Court has repeatedly affirmed the authority of states and localities to prohibit discrimination in employment, housing, and public businesses (also known as public accommodations). For example, in *New York State Club Association v. City of New York*, 487 U.S. 1 (1988), the Court upheld New York City’s local law prohibiting discrimination on the basis of sex and other protected characteristics by public accommodations and rejected a

challenge by social and service clubs who contended that such a law infringed their rights to expressive association and their religious freedom. Similarly, in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), the Court upheld a Minnesota statute that banned discrimination in public accommodations on the basis of sex and other protected characteristics, citing the state's compelling interest in eradicating discrimination. The Court reiterated that state civil rights protections, including California's broad statute banning discrimination in public accommodations based on various protected characteristics, are appropriate in service to the state's compelling interest in combating discrimination, despite potential conflict with expressive or associational preferences, in *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987).

The Supreme Court has also held that state laws banning discrimination on the basis of sexual orientation "are well within the State's usual power to enact when a legislature has reason to believe that a given group is the target of discrimination, and they do not, as a general matter, violate the First or Fourteenth Amendments." *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 572 (1995). Although the Court ultimately decided against the plaintiff in this case because it found that a parade was so much an expressive act that the First Amendment prohibited application of nondiscrimination laws to force the parade's organizers to accept speakers they did not want to include, this decision affirms that states have authority to prohibit discrimination in public accommodations, including discrimination on the basis of sexual orientation.

Balancing protections against discrimination with other constitutional rights

While the government has broad authority to pass anti-discrimination protections to ensure that residents have access to basic opportunities like housing, employment, and access to public businesses operating within the state or locality free from discrimination, the First Amendment protects individuals' freedom of religion, freedom of speech, and freedom of association. Individuals and organizations that are fundamentally religious or expressive in nature retain these cherished rights in jurisdictions where anti-discrimination laws regulate certain types of commercial activity.

State and local laws that prohibit discrimination regulate certain commercial conduct: for example, decisions about hiring, firing, promotion and treatment of employees in the case of laws against discrimination in employment, decisions regarding the sale or rental of housing and mortgage approval in the case of laws against discrimination in housing, and decisions on whether and how to serve customers in the case of laws against discrimination in public accommodations. Entities choosing to participate in the public marketplace are already subject to various prohibitions on discrimination, and expanding these prohibitions to include discrimination on the basis of sexual orientation and gender identity is consistent with existing First Amendment protections and guarantees.

First, explicit exceptions in anti-discrimination statutes ensure that they only regulate commercial conduct; for example, laws prohibiting discrimination in employment typically explicitly exempt religious entities' hiring of individuals to perform overtly religious duties, such as priests, pastors or imams. Because these types of exemptions are already present in federal

law as well as the law of many states and localities, using the same exceptions in bills that prohibit discrimination on the basis of sexual orientation and/or gender identity will maintain the status quo. There is no need for any new or different exceptions for anti-LGBT discrimination.

In addition to raising concerns about religious freedom, some opponents of anti-discrimination laws claim that barring public accommodations from engaging in anti-LGBT discrimination will interfere with private organizations' rights to free speech and freedom of association. This argument too has no merit. The term "public accommodation" is unfamiliar to many Americans. Any business that is open to the general public typically constitutes a public accommodation, although there are slight variations among state and local definitions.

The government's authority to prohibit discrimination by public accommodations is well-established. *See, e.g., Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) (upholding constitutionality of provision in federal Civil Rights Act barring racial discrimination by public accommodations). Public accommodations typically implicate local and/or interstate commerce, and governments have compelling interests in ensuring that all citizens can support their families, travel, and participate freely in public life by utilizing public accommodations, including but not limited to restaurants, grocery stores, gasoline stations, transportation terminals, hotels and motels, medical facilities, parks, and concert halls.

Arguments that such businesses have a constitutional right to discriminate have been raised in the past, and have been routinely rejected by the courts. For example, in *Newman v. Piggie Park Enterprises, Inc.*, the Fourth Circuit Court of Appeals rejected arguments by a South Carolina restaurateur that his chain of drive-in barbecue joints was entitled to refuse service to African-Americans, holding instead that the restaurants were public accommodations subject to the Civil Rights Act prohibition of such discrimination. 377 F.2d 433 (4th Cir. 1967); *aff'd on other grounds*, 390 U.S. 400 (1968). In the *Roberts* and *New York State Club Association* decisions discussed above, the Supreme Court similarly upheld prohibitions on sex discrimination in public accommodations that had been implemented by the State of Minnesota and the City of New York, respectively. 468 U.S. at 617-631 ; 487 U.S. at 10-15.

Unlike a public accommodation that has elected to open its doors to members of the public at large, a private organization with a primarily expressive mission has a constitutional right to exclude participation on the basis of protected characteristics such as race, religion, or sexual orientation, which is not affected by state or local nondiscrimination statutes. In *Hurley*, 515 U.S. 557 (1995), the Supreme Court held that although the annual St. Patrick's Day parade in Boston had originally been sponsored by the City and public in nature, at the time the plaintiff organization brought suit seeking to enjoin its exclusion from the parade, the parade was a private expressive undertaking. Accordingly, the private group organizing it was permitted to choose the message(s) the parade would convey, and could choose to exclude a group whose purpose was to increase visibility and acceptance of gay, lesbian, and bisexual individuals within the Irish-American community in Boston.

Similarly, in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), the Supreme Court found the Boy Scouts of America to be a private entity that had expressive goals and was entitled to exclude openly gay individuals based on its belief that homosexuality was inconsistent with the messages the organization sought to convey. Unlike the restaurants in *Piggie Park Enterprises*, the Boy Scouts of America in *Dale* and the veterans' organization in *Hurley* were not primarily engaged in a commercial enterprise, and accordingly their activities were afforded more First Amendment deference. The *Hurley* and *Dale* decisions illustrate that private expressive activity retains First Amendment protections in jurisdictions where prohibitions on sexual orientation discrimination in public accommodations take effect.

Although private expressive groups should not be denied the ability to exclude individuals who might impair their message, barring public accommodations—private businesses that are open to the public at large—from discriminating against potential customers or employees is well within the scope of governmental authority. *See, e.g., Newman v. Piggie Park Enterprises*, 377 F.2d 433 (4th Cir. 1967); *aff'd on other grounds*, 390 U.S. 400 (1968).

State of the law

Currently neither federal nor North Dakota law mandates equal treatment regardless of sexual orientation in employment, housing, public accommodations, or credit. Gender identity and gender expression are also not covered, although courts in some parts of the country have viewed unfair treatment based on someone's gender identity as discrimination on the basis of "sex," which is already illegal. While we believe that the U.S. Constitution bars discrimination against LGBT people in many contexts, courts have not always agreed, and explicit legal protections are necessary to address ongoing discrimination.

Only SB 2279 will ensure that LGBT North Dakotans receive equal treatment, no matter where they work or live. This kind of law is the same tool state legislatures have used for decades to ensure equal treatment of certain groups of citizens who have historically been treated unequally. This law would protect all people, gay or straight, from unfair treatment on the basis of sexual orientation and gender identity, by giving the same protection that already exists under our state's law regarding discrimination on the basis of sex, race, or religion.

SB 2279 would do nothing more than extend to sexual orientation and gender identity discrimination the same basic legal structure that has applied to other forms of employment, housing, and public accommodation discrimination in North Dakota since the North Dakota Human Rights Act's passage in 1983. The experience that employers and others have developed in complying with those provisions over the past three decades, and the law developed under those provisions, will necessarily inform, guide, and ease compliance with SB 2279 if it should be enacted into law. SB 2279 balances North Dakota's compelling interest in eradicating discrimination based on sexual orientation and gender identity with the rights of individuals and private organizations to free expression, free association, and free exercise of religion.

Successful implementation

It is worth noting that anti-discrimination laws that prohibit adverse treatment on the basis of sexual orientation and/or gender identity already cover much of the population of the United States. The numerous states and localities that have already implemented such provisions have done so successfully, without inundation by litigation and without infringement on private expressive and religious activities.

As of today, twenty one states and the District of Columbia have passed statutes prohibiting discrimination against lesbian, gay, bisexual, and transgender people in the contexts of employment, housing, public accommodations, and/or education. In addition, at least 136 cities, towns, and counties have passed equivalent local ordinances.

None of these statutes and ordinances has resulted in the paralyzing volume of complaints that opponents claim to fear when such protections are proposed. Instead, complaints are filed at a steady but small rate, illustrating that these forms of discrimination are real and current problems but that investigation and enforcement activities will not place a major burden on either the responsible government agency or regulated entities. An analysis of employment discrimination complaints received by state enforcement agencies between 2003 and 2007 found that such complaints were filed at an average rate of 2.8 per ten thousand lesbian, gay, or bisexual employees of state government, 3.2 per ten thousand lesbian, gay, or bisexual employees in local government, and 4.1 per ten thousand lesbian, gay, or bisexual employees in the private sector.

These rates are similar or lower than the average ratio of sex discrimination complaints and race discrimination complaints to female employees and employees of color, respectively. Gender identity discrimination complaints are filed even less frequently. Evidence from jurisdictions that already provide the protections disproves contentions that anti-discrimination laws covering LGBT people will result in extensive controversy and litigation.

Conclusion

While SB 2279's legal remedy is important, its underlying promise matters most. Civil rights laws work not because we are able to haul those who disobey them to court, but because most Americans and North Dakotans are good, law abiding people. When we say that as a state no one should lose a job because of religion, most businesses accept that.

Most people accept it because our laws are above all, a statement about what we believe as a people. So too with a law against sexual orientation and gender identity discrimination. And what we say with a state civil rights law banning employment, housing, and public accommodation discrimination based on sexual orientation and gender identity is not that we endorse being lesbian, gay, bisexual, or transgender any more than our federal and state civil rights laws against religious discrimination endorse being Christian, or Jewish or Muslim or agnostic. A law against sexual orientation and gender identity discrimination says that we really believe the American promise that everyone should have a fair chance to go where their brains and guts and grit can take them. A law against sexual orientation and gender identity discrimination says that we really believe in that promise, and that we want it to be real. That isn't much, and yet it is everything.

The ACLU of North Dakota urges this Committee to give SB 2279 a Do Pass recommendation.

Again, thank you for the opportunity to testify in support of this bill and I will stand for any questions.

SB 2279 Stories Shared During Testimony

#17

3-23-15

Suzie Bartosh

Suzie, a life-long Bismarck resident, had to stop attending a local alcohol treatment program because the program staff and residents would not stop harassing her with degrading comments, and, the program was going to require her to undergo conversion therapy in order to graduate the program.

Frank Cavalleri

Frank, a former employee of Watco Companies, was harassed and regarded as being a homosexual, even though he is not. He was called many derogatory terms and phrases and humiliated in front of his subordinates by someone in management.

Maxwell Maltese

Max, a recent graduate of the University of North Dakota, was homeless for three months, at the age of 21, after being evicted from his apartment because his landlord found out he was gay. He moved to Minnesota to avoid further housing discrimination.

Andrea Rebsom

Andrea, an employee of a manufacturing company in Dickinson for 15 years, had to quit her job, and obtain a two-year restraining order, because the company would not fire a co-worker after he gave her a disgusting gift, and sent her degrading and disgusting emails and videos once he found out about her sexual orientation. Her employer stated that there was nothing they could do because sexual orientation is not a protected class in ND.

Riah Roe

Riah, a Fargo native, turned down an opportunity to work towards her PhD at UND after being fired from her job as a speech and debate coach once her employer found out she was transgender. She has moved to Minneapolis, where she doesn't have to worry about this type of discrimination.

Lucas Stroh

Lucas, a Killdeer native, was required to attend the church of his landlord, or his rent would have substantially increased, because his landlord knew his sexual orientation.

His landlord would stop into his apartment, at any hour of the day, looking for a reason to terminate his contract because the contract did not contain a, "morals clause."

Susanna Warner

Susanna, a Bismarck mother of two, was fired from her job as a housekeeper when her direct supervisor discovered she has a female partner. She now lives in fear that she could lose her current or any future job based on this legal discrimination.

Kenneth Winter

Kenneth, an employee of Two Bit Rentals in Williston, was the object of crude jokes by several staff members, including the business owner, general manager, human resource director and many others. The jokes involved crude and ongoing conversations about Kenneth's sexual orientation, with the apparent attempt to belittle him by labeling him as a homosexual. Kenneth is not a homosexual.

Chairman Weisz and members of the committee,

After hearing that there were no instances of discrimination brought before the Senate committee that heard this bill, I felt compelled to take this opportunity to inform you that this kind of discrimination has happened before, in Minot. I have witnessed it myself.

I used to work for a bank with a high amount of turn over. This was right after the flood in 2011 and it was very difficult to find and retain employees. It was even more difficult to find people to work in the banking industry. After watching person after person come in to interview in torn jeans and sweatshirts, we finally had a young man come in wearing a pair of slacks, a vest, a dress shirt, and a tie. He was polished, put-together, and polite. He was the first person to come in who looked like he really wanted the job. I was a teller at the time, and so was not a part of the interview or hiring process, however my boss was.

Once the interview was over, the man left and my boss came behind the teller line to ask me a question. I asked her how his interview had gone. We had been so short staffed I was eager to hear if we would soon be hiring someone. She answered something along the lines of "He was great. Great resume, nice personality, very put-together. It was a really good interview. It's a shame I can't hire him." Puzzled, considering the glowing review she just gave, I asked her why she wasn't going to hire him. Her response was, "Because I'm pretty sure he's gay."

I was shocked by her answer. I would not have guessed that she would make this statement. I was upset. I told her, "That is not a reason to not hire someone." She explained to me that she was doing it for his own good, that there were men working in the bank who would be rude to him, and she was doing him a favor by not subjecting him to that. I could not think of anything else to say that would allow me to keep my job, so I let it drop and went back to my work.

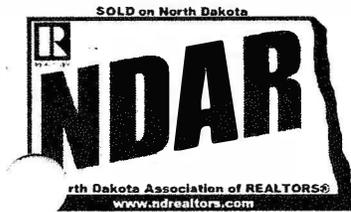
I think part of the reason I chose not to tell anyone was because I was ashamed. I was ashamed that I could not tell my boss at the time that what she was saying was wrong and that I didn't want to work for a person who would do that. I was ashamed because I needed the money. I was pregnant at the time and could not afford to quit based solely on my morals. It is a sad thing to get older. We do not always have the freedom to make choices based on what is right and wrong. We have too many responsibilities. Too many people depend on us. As a result, I stayed at that job for almost another year, before eventually finding a better fit. My point is this: You are in a position to make decisions based on what is right and wrong. Not many people get that luxury.

As it stands right now, in our state, there are people that don't even have the luxury to be hired or fired based on the merit of their work alone. People who do not have the luxury to live in a home they are capable of paying for, even if they are glowing tenants, so long as they love the "wrong" person. Please take this into consideration

and, if possible, pass my story on to any others who are lucky enough to make decisions based on what is right and what is wrong. I made a mistake once before by keeping my mouth shut when I saw somebody doing something wrong. I don't intend to make that same mistake twice. I feel guilty about it enough from the first time around. Please give SB2279 a Do Pass recommendation.

Thank you for your time.

Micki Mertz
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Velva, ND 58790



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SB2279

3-23-15

#19

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TESTIMONY IN SUPPORT OF SB 2279

Chairman Weisz and members of the House Human Services Committee, my name is Nancy R. Willis and I am the Government Affairs Director of the North Dakota Association of REALTORS®.

NDAR represents more than 1600 REALTOR® and 250 affiliate members statewide.

We stand in support of SB 2279 and urge a Do Pass. REALTOR® members of NDAR also are members of the National Association of REALTORS® and by committing to abide by a Code of Ethics that prohibits discrimination, including for sexual orientation, which was adopted in 2011 in celebration of the Code of Ethics being 100 years old, they are entitled to use the trademarked designation of REALTOR.®

NDAR also follows a Public Policy Statement approved by its members which states:

“NDAR acknowledges and supports the right of all people to freely choose where they will live regardless of race, color, religion, sex, disability, handicap, familial status, national origin, sexual orientation or gender identity or with respect to marital status or receipt of financial assistance. This right is protected under federal and/or state fair housing laws and is a standard of practice of the *Code of Ethics of the National Association of REALTORS®.*”

For these reasons, the ND Association of REALTORS® supports adding language prohibiting discrimination based on sexual orientation to ND law.

** Gender ID*

I would be happy to answer any questions.

Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

• Standard of Practice 9-1

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

• Standard of Practice 9-2

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. *(Adopted 1/07)*

Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. *(Amended 1/11)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. *(Amended 1/11)*

• Standard of Practice 10-1

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. *(Adopted 1/94, Amended 1/06)*

• Standard of Practice 10-2

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05, Renumbered 1/06)*

• Standard of Practice 10-3

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. *(Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/11)*

• Standard of Practice 10-4

As used in Article 10 "real estate employment practices" relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00, Renumbered 1/05 and 1/06)*

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage: specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

• Standard of Practice 11-1

When REALTORS® prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such opinions shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
 - 2) date prepared
 - 3) defined value or price
 - 4) limiting conditions, including statements of purpose(s) and intended user(s)
 - 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
 - 6) basis for the opinion, including applicable market data
 - 7) if the opinion is not an appraisal, a statement to that effect
- (Amended 1/10)*

• Standard of Practice 11-2

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

• Standard of Practice 11-3

When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

• Standard of Practice 11-4

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

JEAN BLASER

#20

Testimony for the House Human Services Committee Hearing for SB 2279

March 23, 2015

Treat people the way you want to be treated. Talk to people the way you want to be talked to. Respect everyone.

We are all unique individuals and different from each other. Just because an individual is gay, it does not mean they should not receive the same respect and rights as every other individual. Discrimination denies human rights often based on prejudice and incorrect perceptions. In our family we have a son who is gay. As a mother, my first instinct is to protect him from all discrimination, but I need the help from our state and our legislators to pass laws to protect his human rights, to protect him from being evicted from an apartment, to protect him from being dismissed from a job. Currently, the law does not provide any protection and we do not have any recourse to file a discrimination claim with the state.

I grew up in Garrison, North Dakota, graduated from Garrison High School, and went on to attend and graduate from North Dakota State University. After graduation, I moved to Bismarck where I met and married my wonderful husband. We have a son, a daughter, and 2 dogs to complete our family. We are no different than any other family. Our son is no different than any other son.

Our son has gone on to create a very successful business in Bismarck and employees a full time staff of 5. He has created jobs in this state. He has contributed to the foundation of the economy with his small business. He and his life partner of 5 years are very happy in North Dakota and I want to make sure they continue to have a future in this great state.

My husband and I have raised our son and daughter to be good citizens and have taught them the values we were taught from our parents. Discrimination is not one of those values. Discrimination is not a North Dakota value. When someone discriminates

against another North Dakotan because of who they are, who they love, or how they define their family, there should be an opportunity for the individual to ask the state to investigate just like any other type of discrimination.

Through the years I began to realize not everyone respects or accepts other people as I was raised and encouraged to do so. We have experienced the devastation of a vehicle graffitied in red paint targeting our son. We have a daughter who has been bullied because her brother, who she adores, is gay. She has been bullied not only from her peers but teachers.

Discrimination must stop. And this bill is what is needed to help stop discrimination. We cannot allow our sons and daughters to have their human rights denied and taken away. We need to leave the legacy of human rights.

My father, who was a banker in Garrison, often referred to North Dakota as "God's Country". We need to make North Dakota a state where you treat people the way you want to be treated, where you talk to people the way you want to be talked to, and where we justly provide human rights.

#21

HOUSE HUMAN SERVICES COMMITTEE

MONDAY, MARCH 23, 2015

SENATE BILL 2279: Relating to prohibition of discrimination on the basis of sexual orientation

Chairman Robin Weisz, Vice Chairman Curt Hofstad, Human Services Committee members and fellow citizens of North Dakota, Greetings. Thank you for allowing me the opportunity to share my story this morning.

My name is Kevin R. Tengesdal, a native of North Dakota now living in Bismarck. I have been working in good standing with a company for the past eleven years as a graphic designer. I am a veteran of the United States Navy with an honorable discharge. I am also a graduate from an evangelical Bible College with Bachelor degrees in Biblical Studies and in Biblical Languages. My thriving faith is based upon following the precepts of Jesus.

I stand here to entreat your complete support of SB2279 so as to ensure that discrimination against North Dakota's LGBT persons and their families will not occur within our communities. I have taken this day off from work to share with you my experiences receiving marginalization simply for being gay.

In 1988, after 15 months of service, while home on leave, I found myself in need of assistance from the Minot Police Department. They assured me that if I filed charges, the Navy would not find out. I returned to my ship, ready to put it all behind me. That was not to be as the police had contacted the Navy. Discharge proceedings began, first with two weeks in a psych ward to determine my mental state. On March 18th, the Navy delivered me a DD214 discharge – an honorable discharge via administrative separation due to personality disorder for the convenience of the government with no chance of re-enlistment, for being gay. After I signed the discharge papers, two Military Police ushered me off the San Diego Navy Base, and I was re-entered into civilian life. A DD214 follows you, and if a potential employer wants full disclosure of your background, this can alert them of one's sexual orientation. I was crushed as I had anticipated a life of serving our great country.

During years while living in Maryland, I was actively involved with a Baptist church. Mission trips, choir, Sunday School, the works. One day, I was called by the Pastor for a meeting. He wanted to let me know that under no circumstances would he ever allow me to be involved in any leadership position where the youth were involved, because of my homosexual "problem," as he called it. To this day, I find myself quite hesitant when asked to be in a similar position of leadership, so I decline the offer.

Later, I studied at a Bible college in Columbia, South Carolina with a year in Jerusalem. My intent was to obtain a degree where I would be able to assist Bible translators. In the summer of 1996 just before my senior year of college, Wycliffe Bible Translators terminated my application for service with them due to the DD214 report. I started my final year of college with no clue for a future career path.

With these jarring life lessons, I learned the necessity for purposing to keep my identity best hidden with new employments, most especially when I returned to live here in North Dakota. One anecdote was at my current employment where a summer intern approached our supervisor to ask him if it bothered him that I am gay. He asked her why. She replied, "What if Kevin makes a move on you." His response, "What if the press guys made a move on you." She never spoke to me the remainder of her term.

Gratefully, my neither my work experiences nor housing situations since have not been devastating. Unfortunately, I am unable to claim this tolerance as the definitive norm for all gay citizens within our communities, whether it be in the labor force or in housing situations. Quite frankly, I do not follow the heteronormative rules of society for gays and lesbians, and remain quiet. Simply put there are many gay people who have experienced discrimination of one form or another here in North Dakota. These people are wary of sharing their stories in public for fear of retributions of any kind. Those who have never been marginalized are often unwilling to comprehend this, and perpetually demand proof of any discrimination.

It is my hope that you and the members of the 2015 legislature will choose to be on the compassionate side of history. I request a unanimous DO PASS on this bill as presented. We are a state that prides itself on a strong work ethic, and supporting our families, youth and community. We must pass this bill, now, and without amendment.

In 1888, Robert G. Ingersoll is quoted in "The Limitations of Toleration" stating, "Give to every human being every right that you claim for yourself." Representatives, allow me let me close by simply stating that we, your fellow citizens of North Dakota, are as much a part of this state as you, and as your gay family and friends, we are seeking fair treatment, not fear treatment.

Thank you for your time and consideration.



Kevin R. Tengesdal, District 35
2025 North 16th Street, Apt 4; Bismarck, ND 58501
krten1966@bis.midco.net; 701/527-0737

Chairman and Committee Members,

Thank you for your time today. I am Rev. Gretchen Deeg and am here representing myself. I am an ordained minister serving in Bismarck and am in support of a "Do Pass" recommendation for SB2279.

I live in an apartment here in Bismarck and every time I walk through the door and see the "Fair Housing" poster in the entry way, I am reminded that there are people in North Dakota who can be evicted from their apartments and fired from their jobs because of their sexual orientation. It makes me sick to know that we have individuals and families in our communities living in fear that someone will find out or suspect they are gay.

We have a tight housing market in North Dakota. I regularly speak with people who are unable to find affordable housing in the Bismarck-Mandan area. The fear of being evicted and unable to find alternative housing is a very real fear.

I had one individual living with their partner tell me that they were terrified their landlord would find out they were in a committed relationship, because they didn't know where they would live if they were evicted from their home.

On multiple occasions, I have talked with out-of-state individuals who have moved out of North Dakota or who refuse to move to North Dakota because they know that they or their friends would be actively discriminated against because of their sexual orientation.

About a year ago when someone heard I lived in an apartment and made incorrect assumptions about my convictions as a religious leader, a particular landlord in Bismarck was recommended to me because he does not allow anyone who is gay to rent from him. Discrimination against people based on their sexual orientation is actively being practiced by landlords here in North Dakota.

You will not find accurate statistics about the number of individuals who identify as gay or who live in fear of having their sexual orientation being discovered here in North Dakota. Fear is a powerful motivator to keep silent, especially when speaking up could put a person's housing and job in jeopardy. It is highly likely that every single one of us in this room knows someone who lives in fear because they do not have equal protections under North Dakota law.

Later on I imagine you will hear faith-based arguments against SB2279 claiming that this bill would infringe upon the religious rights of people to discriminate against others. As a theologian and a Christian leader, I want you to be aware that there are no religious rights within Christianity that permit the discrimination or judging of others. On the contrary, the core of Christianity requires that its followers refrain from judgment of others and that they treat all people with the same respect and love as they themselves would desire. Extending the same legal protections to others, even those with whom one might not agree, is not an infringement upon religious freedom.

It is my hope that you will speak out in support of providing all North Dakota residents with equal protections under the law by recommending a "Do Pass." Thank you.

Rev. Gretchen Deeg
1818 E Capitol Ave Apt 303
Bismarck, ND 58501
701-347-1235 cell

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SB 2279

3-23-15

#23

Good morning Chairman Weisz; Vice Chairman Hofstad; Members of the House Human Services Committee; and all other hearing attendees interested in SB 2279. My testimony today is in support of SB 2279 which will protect all citizens of North Dakota. I ask that this Committee send to the bill to the floor with a "DO PASS" recommendation.

This is not a religious issue. This is not a political issue. This is a human rights issue. This is a HUMAN issue. Every human deserves the chance to work and live in an environment free of discrimination.

While many are focusing on the how this bill will impact the LGBTQ community, I am focusing on how it could impact the non-LGBTQ community. Imagine you are in your mid- to late forties. You have been with your employer for over 20 years. Starting in the mailroom, you are now a senior vice-president of Marketing. You arrive at work one morning to find out the company has been sold and the new owner will be at the office the next week. In your mind you are going over your performance and what you have contributed to the company these last few years. Nothing to worry about.

On Monday morning the first office the new owner visits is your office. He looks around and sees your diplomas, your awards, and your family pictures. Nothing to worry about.

He starts the conversation by thanking you for your dedication and hard work. He then states you will receive a fair severance package and asks that you please have your office cleaned out by the end of the day. Nothing to worry about. Wait, what did he say – severance package, clean out my office?

You ask, "Why is this happening?" He says it is nothing personal, but, in his experience, gay men are much more creative than straight men and he is replacing you with a gay man. He says he is sure you will find another job and he will write you a good reference.

How can this be happening? What can you do? Who can you contact to fight this?

Unfortunately, there is nothing you can do. There are **no protections for anyone** based on sexual orientation. Because we all have a sexual orientation, this bill impacts us all. You can be denied employment, housing and credit because you are straight and there is nothing you can do about it. Oh I can hear you saying this will never happen. Maybe, maybe not, but it could. And it does. It happens every day to the LGBTQ community.

I spent almost 4 years working in the ND Department of Labor and Human Rights. I heard the stories. Did we keep track of these stories? No; we had more than enough to do investigating the cases that were filed. There is one call I do remember out of the thousands of phone calls I took while working there. It came from a young woman who lived and worked in the Williston area. She was very emotional on the phone. She stated she was being bullied, tormented and harassed at work because she was a lesbian. I wanted to help, but North Dakota doesn't recognize sexual orientation as a protected category. I knew that I could refer her to the federal office in Minneapolis since I had been told at a recent conference that the EEOC was going to start reviewing sexual orientation cases under the protected category of sex. I continued speaking to her, but had a nagging feeling I was forgetting something. I then asked how many people her employer employed. She answered, "11." My heart sank. While in North Dakota we recognize an employer as a "covered employer" if they have as few as 1 employee, the federal law doesn't recognize an employer as a "covered employer" until they have a minimum of 15 employees. There was nothing I could do; North Dakota didn't recognize this young woman under a protected category and the federal laws didn't recognize her employer as being covered by the law since there were not enough employees.

I ask you today to give the investigators at the North Dakota Department of Labor and Human Rights the ability to assist our citizens who just want to do their job and live their life without the fear of discrimination. Tell employers they need to decisions based on performance and qualifications; not on who their employees are attracted to.

SB2279

3-23-15

#24

Chairman Weisz and members of the Human Services Committee

My name is Joe Vetter.

It is with great hope that I stand before you today. I hope that the great state of North Dakota, the state I hold so dear, will finally move into the 21st century and provide protection to all of its citizens.

I hope that as I continue with my fourth year serving and protecting our state as a member of the North Dakota National Guard, I will be afforded the same rights and protections as those I serve and protect. I am proud to serve our state and country and am ready to deploy whenever they need me. I ask that you pass Senate Bill 2279 to make sure individuals around North Dakota, many of which are serving in many different capacities, cannot be evicted or fired because of who they are.

Progress is being made; I am offered protections against discrimination in my position as a member of the North Dakota National Guard. However, as I begin my career as a nurse, I am not granted those same protections. Three semesters remain until I will earn my license to serve my community as a Registered Nurse. I hope that community will be in the wonderful state where I have grown up, and have met many milestones. I hope the decision to remain here is made easier by knowing that my job will never be in jeopardy due to who I love, and that my home cannot be taken from me for that same reason.

Just like North Dakota, most states continue to see shortages in the care that is provided by a nurse. 27 of those states recognize me fully as a citizen and provide me the same protections in my job as everybody else. I hope that by the time my three semesters are completed, I will be able to proudly choose to serve a community in North Dakota, knowing that I am protected at work, in my home, and while in uniform. I hope that I will not be forced to look outside of this great state for a place to call home.

Thank you for listening to my hopes.

Sincerely,

Joe Vetter
819 North 3rd Street Apt #4
Bismarck, ND 58501

Testimony to House Human Services Committee
Re: SB 2279
Monday, March 23, 2015

#25

Chairman and members of the committee,

I'm here today to give my testimony in support of SB 2279. I am a nearly lifelong resident of North Dakota. I grew up here, as did my husband and my parents. I have strong ties to and a deep love of this state. I have always taken great pride in telling people whenever and wherever I travel that I am indeed from North Dakota. I am also the mother of 5 beautiful children, ages 6-23, who mean the world to me. Just as my parents taught me, I have done my best to teach them the importance of standing up for what they believe is right, and to always treat people with the same dignity and respect with which they would like to be treated. I am urging this committee to recommend a "DO PASS" vote when this very important piece of legislation leaves your committee for a full House vote.

In 2015, I believe the time has come for our legislature to state loud and clear that discrimination is NOT a North Dakota value ... in any form. There are currently a whole host of classes of people who are protected from discrimination, ranging from those things we can't choose, such as our race, age, and sex ... to things we can choose, such as our religion or marital status. However, North Dakota is one of just a couple dozen states where there are currently no protections against discrimination simply because of one's sexual orientation. This is unacceptable to me. Some members of the LGBT community and their allies have spoken in support of SB 2279, telling their stories and what this legislation means to them and for them. Please, listen to those voices.

You will also hear opposition today to SB 2279, some of which I'm sure will be meant to strike fear in your hearts about what may come ... talk about creating a "special class" of citizens, that sexual orientation is a lifestyle choice, or that somehow advocating for one's rights is nothing more than bullying. I would suggest that what we, as supporters of 2279 are advocating is simply the same rights that these opponents would like to claim for themselves.

I'd like to ask each of us to take a moment and consider whether you've ever been the subject of discrimination. Have you ever felt you must avoid talk about your children, your spouse, or your significant other in the workplace, out of fear or retaliation or loss of employment? I sincerely hope not, but had it happened, there is protection against such discrimination in our Century Code. Have you been denied housing because of your marriage, or lack thereof? I have been. It was roughly 20 years ago, I was a single mother of 1 child, and I was thankful to know that the law was on my side. Are you ever concerned that you will be denied access to public accommodations because of the color of your skin or the gender of your significant other, or credit transactions because you have a physical disability, or perhaps

government services because you are a Lutheran? We don't have to fear any of these circumstances as our Century Code prohibits such discrimination. These are the kinds of currently legal discriminatory acts that my friends in the LGBT community may face on a daily basis, with no recourse. It is unfair, and it is unequal treatment under the law.

Equal rights are not special rights. If they are, then I would suggest that we all belong to a "special class" which enjoys legal protection against discrimination. Which one of our rights would we be willing to give up if we had to? Rights based on our marital status? Our religion? Our participation in lawful activities during nonworking hours? I will speak for myself and say that I'm not willing to give up any of them.

Please do not let fear cloud this issue, or go along believing that things are just fine the way they are. Legal acts of discrimination are happening every day, right here in North Dakota. The consequences of NOT passing SB 2279 are far more dire than any imagined threats should this bill pass.

I love this great state of North Dakota, and I want it to be a place I will always be proud of living in and raising my children. Let's truly treat all people with the respect that they deserve. Please join me and thousands of other North Dakotans in support of our friend, neighbors, co-workers, and family members. Please give a "DO PASS" recommendation to SB 2279.

Thank you for your time and consideration.

Ann Porter
Bismarck, ND
District 35

Handed In
26
3-23-15

March 22, 2015

Members of the House Human Services Committee,

I am in a precarious position. I am writing to you today because I am not able to come in person to speak without fear of losing my income and my home. I have the first amendment right to speak, however I am not protected from the ramifications of my words. I am not an important person. I am only one of many.

With bills such as the one before you, I understand very well that many of you have already made up your minds which way you will vote. I understand that the constituents in your districts have emailed, called, and messaged you their opinions on how you should vote. I would just ask you to pause a moment before you vote no.

I would like to address the thought that in North Dakota, there isn't a need for this type of law. Lawmakers must consider the past, present, and future consequences of every bill that is put before them. The protection this bill affords to people like me is invaluable, and absolutely necessary.

In the past, I have been fired from a job as a housekeeper because my direct supervisor found out that I was in a relationship with another woman. I have testified about this time in my life publicly, and my testimony is still on record.

Presently, I face a type of discrimination that has been difficult to voice. I do not believe I would be outright fired for voicing my support of this bill. However, my current job has become very difficult in the recent weeks. I believe if I came to speak, my job would become even more difficult, and I would be forced to quit. I work for a small, locally owned business that does not have a Human Resources department, nor is there any avenue for me speak to someone who will be impartial. I have already lost my opportunity to advance.

The future implications of this bill for my family are huge. We live in a manufactured home in a mobile home park. I own my home, without a mortgage, but I rent the land it sits on. Several months ago, we received a letter from the park management indicating that homes that are 40 years old and older would have to be torn down or moved out of the park if the title is sold, regardless of the condition of the home. My home was built in 1975, and it does fall in that category. Because my landlords are currently able to discriminate against my family, due to my and my wife's relationship, I am afraid I may be forced out of my home.

I am the primary breadwinner in my family, and at \$13.00 per hour, we are doing ok. But if either my job or our home were taken from us, we would be devastated.

I am nobody important. I go to work every day, and do my best. I have dinner around the table with my family every night. I hold deep gratitude for the values that have been ingrained in me as a North Dakota citizen. I just want to know I am safe in my job, in my home, and on the street. I am only one of many who cannot come and speak in front of you out of fear. And I am afraid.

Susanna Warner
Bismarck, ND

Handed In

#27

3-23-15

March 18, 2015

House Human Services Committee,

First and foremost, I would like to thank the committee today for taking time to hold a hearing regarding this important issue. I am saddened that I am not there to share my lived experience with my fellow North Dakotans. There are so many things I miss and I do hope one day I will be able to return.

My name is Riah (Rye-uh) Roe and in 2013 I made the difficult decision to turn down an offer to earn a PhD from the University of North Dakota. Not only did I turn down that offer, but I felt compelled to leave my home state for her sister state Minnesota. My family moved around quite a bit, so I grew up in Minot, Glenburn, Grand Forks and Fargo. Of course there were many factors that played a role in my decision to leave; however when I am asked, I always give the same reason. North Dakota is not a safe place for those who do not identify as straight.

Some of you will remember several years ago when I testified regarding my employment conflict with Fargo Public Schools after I informed the administration that I was transitioning between genders. To me, that is a bitter but distant memory. Regardless of whether one wants to believe that my gender identity impacted my treatment as an employee or not - the reality remains that North Dakota is perceived to be a state that is unsafe for gender and sexuality minorities.

Many will argue that a non-discrimination law is not necessary because the problem does not exist. I challenge those individuals to reflect on how they have come to this conclusion. My guess is that they know very little about the day to day lived experiences of a person who identifies as LGBT. After all, how many of you can say that you are close to someone who this legislation is meant to protect? Your responsibility as a legislator is to represent all the voices of the North Dakota community; not just the ones that identify as you do.

Now I am sure you have heard and will continue to hear compelling testimony about the heartache and inequality that is born out of LGBT discrimination. While I agree with these testifiers; I hope to bring another perspective to the table. A perspective of the many young people who have been forced to make the same difficult decision I had to make. The decision to leave their families, communities, and state because they are, or perceive to be, unsafe due to their gender identity or sexual orientation.

The Minnesota legislature has time and time again demonstrated their commitment to protecting all Minnesotans from unethical discrimination. It is a state where there are appropriate legal channels to mediate and resolve conflicts such as the one I experienced with Fargo Public Schools. The North Dakota legislature has yet to create such avenues for employers and LGBT folk alike.

I mentioned before that I am saddened I am not there to share my experience directly. I hope that the committee will recognize that my home state, OUR home state is rapidly losing responsibly engaged,

intelligent, tech-savvy, millennials because my generation has yet to see evidence that discrimination is not a North Dakotan value.

One of my biggest dreams is that one day I can come back to North Dakota and feel the same sense of safety and security I did when I was pretending to identify as a straight man. When that day comes, I and many others of my generation will bring back with them talents and skills that North Dakota undoubtedly needs in this time of unprecedented change. However, that day will not come until a commitment to ALL North Dakotans, regardless of their gender identity or sexual orientation, is confirmed by supporting this legislation.

Thank you for your time and I earnestly urge your support on this bill.

Riah Roe

Handed In #28
SB 2279
3-23-15

Senate Resolution

To: The Student Senate of the University of North Dakota

Authors: Derek LaBrie—Government Affairs Commissioner

Sponsors: Taylor Nelson—On Campus Apartments Senator

CC: Tanner Franklin - Student Body President, Brett Johnson - Student Body Vice President, Cassie Gerhardt - Student Government Advisor, Andrew Frelich – Student Organization Funding Agency Advisor; Dr. Lori Reesor – Vice President for Student Affairs, Cara Halgren – Associate Vice President for Student Services & Dean of Students

Date: February 1st, 2015

Re: Support for North Dakota Senate Bill 2279

2 Whereas, on February 3, 2013 University of North Dakota Student Senate passed SR 1213-15 which
 4 supported North Dakota Senate Bill 2252, a non-discrimination clause to include protection regardless
 of sexual orientation, and

6 Whereas, on October 13, 2013 University of North Dakota Student Senate passed SR 1314-05 which
 supported the Non-Discrimination Housing Ordinance Amendment to the Grand Forks City Code, and

8 Whereas, in the Community Values Statement passed by the University Senate in 1966, the University
 is intended to foster “an environment where all faculty, staff, and students deserve to be treated with
 dignity and respect,” and

10 Whereas, the North Dakota State Senate will be discussing Senate Bill 2279, and

12 Whereas, North Dakota Senate Bill 2279 amends sections of the North Dakota Century Code to
 include prohibitions of discrimination based on sexual orientation, and

14 Therefore, be it resolved that the Student Senate of the University of North Dakota fully supports the
 intention of North Dakota Senate Bill 2279, and urges the 64th Legislative Assembly to adopt this piece
 of legislation.

Student Body President, Tanner Franklin

#29 SB2279
3-23-15



North Dakota Senate

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Senator

Carolyn C. Nelson
District 21
210 11th Street North, Apt. 205
Fargo, ND 58102-4687

Residence: 701-235-5161
cnelson@nd.gov

Committees:

Government and Veterans Affairs
Judiciary

2279 is a bill to allow all our citizens to advance toward their American Dream. It is a bill that truly states ND values, respect and acceptance of all people, regardless of who they love.

This bill affects employment, public accommodations or services, credit transactions, sales or rentals, brokerage services, there is a religious, private club exemption. It also includes insurance, and jury service.

There are currently 21 states and the District of Columbia that have total non-discriminations policies. Add to that over 200 cities and counties and many Fortune 1000 companies and American 200 law firms that have similar policies. In the past 10 years, major businesses have gone from 13 to 366 with scores of 100 from the Human Rights Commission; many of those companies operate in ND.

What SB 2279 does is extend basic protections in the home and workplace to members of the LGBT community in ND by including sexual orientation to the ND Fair Housing Act and the North Dakota Human Rights Act. The people this legislation is designed to protect from losing their job or being evicted from their homes because they are gay, lesbian, bisexual or transgender are our sons, daughters, brothers and sisters. They are the folks we work with the worshipers that we sit next to in the pews on Sunday. They are our friends and family. They are people we love.

There is a reason that 90% of the Fortune 500 companies include sexual orientation as a protected class in their company handbooks... they want to be successful, they want to employ the best and brightest, no matter what their sexual orientation. As one large business commented, It's just good business.

This legislation will serve to increase the state's ability to attract, retain and expand its pool of talented workers. We want to encourage our young people to stay and many of them desire caring, inclusive and diverse communities. This will head us in the right direction.

On January 27, the Mormon Church started a campaign for new laws that protect the LGBT people.

Last year, the current leader of the Catholic church said "Who are we to judge?" Discrimination is judgment.

Martin Luther King said, "The time is always right to do what's right". I encourage a "do pass" on SB 2279.

Sen. Carolyn Nelson

Handed In #30
3-23-15

Questions and Answers about Senate Bill 2279

What is Senate Bill 2279?

It is a bill that adds sexual orientation and gender identity and expression to the already existing North Dakota Housing Discrimination Act and North Dakota Human Rights Act. Current law makes it illegal in North Dakota to discriminate on the basis of race, color, religion, sex, national origin, and age. This act would extend current law to prohibit unfair treatment on the basis of sexual orientation and gender identity and expression as well.

Why is it necessary?

North Dakota is competing for an educated and talented workforce in almost every industry. Lesbian, gay, bisexual and transgender (LGBT) North Dakotans tend to move to states that afford them these protections and many people discount North Dakota as a potential place to work or live in based on the lack of protections.

Through its Human Rights Act, North Dakota has adopted a policy requiring equal treatment of groups of citizens who face widespread social antagonism and unequal treatment. Unfortunately, LGBT North Dakotans are not explicitly protected by the law. There are several examples of North Dakotans experiencing unfair treatment in finding and holding jobs to support themselves and their families and numerous studies and surveys show that LGBT people continue to experience this form of discrimination.

Doesn't the law already protect lesbians and gay men?

Neither federal nor state law currently mandates equal treatment regardless of sexual orientation in employment, housing, public accommodations, credit or education. Gender identity and gender expression are also not covered, although courts in some parts of the country have viewed unfair treatment based on someone's gender identity as discrimination on the basis of "sex," which is already illegal. While we believe that the U.S. Constitution bars discrimination against LGBT people in many contexts, courts have not always agreed, and explicit legal protections are necessary to address ongoing discrimination.

Will this proposed law give gay people special rights?

No. All it does is create an equal playing field. This kind of law is the same tool state legislatures have used for decades to ensure equal treatment of certain groups of citizens who have historically been treated unequally. This law would protect all people, gay or straight, from unfair treatment on the basis of sexual orientation and gender identity, by giving the same protection that already exists under our state's law regarding discrimination on the basis of sex, race, or religion.

Will this law block employers from firing incompetent employees or dealing with disruptive behavior?

No. The law would prevent businesses from firing straight, gay or transgender employees based on their sexual orientation or gender identity alone. Employees who are not able to meet the requirements of their job, regardless of their sexual orientation, race, gender, age, etc. are not protected by this legislation.

Do employers support equal treatment for LGBT people?

Yes. In fact, corporations have taken the lead in acknowledging that firing people for being gay is wasteful and it is good for business to hire and retain employees based on the quality of their work. A growing number of North Dakota businesses, (Wells Fargo, Microsoft, U.S. Bank, Montana-Dakota Utilities, Wal-Mart, Sanford, NISC, Target, and many others) to smaller businesses, have adopted their own policies of non-discrimination on the basis of sexual orientation. While these policies reflect the good intentions of many employers around the country and in this state, they are not necessarily enforceable and do not apply in all workplaces. Only this type of law will ensure that LGBT employees receive equal treatment, no matter where they work.

Won't this law create a slippery slope towards banning discrimination on the basis of eye color?

No. The categories in the North Dakota Human Rights Act reflect identifiable social groups of citizens who, as a group, have faced a history of unequal treatment. They are not frivolously determined categories. No one can seriously deny that lesbian, gay, bisexual and transgender people face extensive societal and legal hostility.

Will this law mandate marriage for same-sex couples?

No. This act does not affect the domestic relations laws, which restrict marriage in this state to opposite-sex couples

How many other states have passed laws prohibiting discrimination on the basis of sexual orientation and/or gender identity?

As of January 2015, 21 states (plus D.C.) have laws prohibiting discrimination on the basis of sexual orientation and 18 states (plus D.C.) prohibit both sexual orientation and gender identity discrimination. More than 125 cities, towns, and counties have also passed laws prohibiting discrimination against both gay and transgender individuals.

Will this law require kids to be taught in school that it's okay to be gay?

No. This law does not address school curricula.

Could this law result in straight people suing their employers for mistaking them for gay or transgender, or gay people suing because they were "perceived" as straight?

A confused perception of a person's sexual orientation, gender identity, or gender expression is not a ground for claiming discrimination. The word "perceived" in this law ensures that discrimination is illegal if it was based on a belief that someone was gay (or straight), whether that belief was right or wrong. No employer is required to guess an employee's sexual orientation or gender identity. This law just makes sure that employers treat all their employees equally on the basis of job performance and qualifications, not on whether they seem gay, straight, or transgender.

Unlike other protected characteristics, some people say sexual orientation is a behavior/ "is a choice"—why should we be protecting people based on their behavior/"choice"?

For the purpose of anti-discrimination protection it does not matter if a characteristic is 'inborn' or 'acquired'. Current federal law protects people from discrimination on a number of characteristics, such as race, national origin, sex, and religion. Religion is a belief system

that requires certain behaviors, and people may change their religion or start religious practice as adults. Like religion, sexual orientation and gender identity are irrelevant to a person's job performance, regardless of whether you think people have any control over these aspects of their identity.

Why do we need this? What proof is there that people are being discriminated against based on sexual orientation or gender identity in our community?

There is plenty of evidence that this kind of discrimination hurts people across the country. The Williams Institute at UCLA School of Law determined in 2008 that 20% to 57% of transgender people surveyed since the mid-1990s had reported having experienced unfair employment practices based on their gender identity. Similarly, they found that 42% of lesbian, gay, and bisexual people reported that they had experienced work-related unfair treatment at some point in their lives, with 27% having experienced problems between just 2003 and 2008. Without legal protections, lesbian, gay, bisexual and transgender people can be and are fired just because of who they are and not because of how well they do their job.

Why can't the cities that want this just pass local ordinances?

Housing and employment law is left to the state legislature. The cities of Grand Forks and Fargo have passed LGBT-inclusive workplace policies for city employees, only. However, they have no jurisdiction over other employers within the boundaries of their city. The city of Grand Forks passed an ordinance outlawing discrimination based on sexual orientation or gender identity in rentals, which they are able to do through their rental registry. The city of Bismarck has expressed its support for 2279.

Cities and counties are limited in their ability to develop LGBT-inclusive ordinances. This means that their employees are protected from discrimination only when working for the city, not at another job or in the home they rent.

Will this cause costly lawsuits and uncertainty for businesses that will drive investment and drive out of our community?

No. The many cities, companies and states that have implemented LGBT-inclusive protections against employment discrimination have not seen any significant surge in litigation. Another recent Williams Institute study found that in states with laws like this, complaints of discrimination on the basis of sexual orientation were filed at an average rate of three to four per year for every ten thousand lesbian, gay, or bisexual employees, which is equivalent to the rate of racial discrimination complaints and lower than the rate of gender discrimination complaints. The costs of these occasional lawsuits to enforce protections are far outweighed by the advantages to society, including reduced recruitment and training costs for businesses, of ensuring that all Americans have equal opportunity. As far as compliance with the law is concerned, treating people fairly, on the basis of their job performance does not impose any additional expenses on businesses.

In 2000, former New York Mayor Ed Koch asked the mayors of jurisdictions that prohibit discrimination against transgender people about their cities' experiences with these types of laws—and none of the mayors reported that implementing the law had caused problems or a rash of lawsuits. Just as in other places where the implementation of the same law did not cause problems, businesses here have nothing to fear from improved nondiscrimination protection

Do North Dakotan's support Senate Bill 2279?

According to a January 2015 poll, 59% of North Dakota voters would vote for SB2279. Many North Dakota organizations also support this bill, those include:

North Dakota Realtors Association
North Dakota State Board of Higher Education
North Dakota United
AFL-CIO
City of Bismarck
City of Fargo
University of North Dakota Student Senate
North Dakota State University Student Senate
North Dakota State University Faculty Senate
North Dakota Human Rights Coalition
ACLU of North Dakota
North Dakota Women's Network

4

SB2279
3-23-15

#1

B

Good morning committee members and thank you for this opportunity to offer my testimony. My name is Jared Kellerman and I'm here in support of SB 2279; before I explain my support I have to tell you a little about myself. I was born and raised in North Dakota and have called this state home my entire life. I am also proud to say that I'm a student pursuing my masters degree in family therapy at North Dakota State University in Fargo. As part of my graduate school training, I have learned to look at the social forces that influence relationships in general and LGBT experiences in particular. Before I continue with my testimony, I would ask the committee the small favor of taking a look at me. I am gay; I am many things, but I wanted to highlight this piece of my identity because research suggests that the more LGBT people you know, the less scary LGBT topics and people become and the more aware and supportive straight legislators become of LGBT citizens. Is it working yet? If not, I hope my testimony will offer you insight into the experiences of North Dakotans that would benefit from this bill.

I have heard opposition to this bill that purporting that LGBT North Dakotans want to be seen as a special class and that they have a choice in their identity. As a student therapist, I take guidance from the American Psychological Association and the American Counseling Association that recognizes LGBT identities as normal and valid variations of sexual orientation and gender identity. Those that support the idea of conversion therapy, which purportedly seeks to shift LGBT folks to heterosexual and cisgender expressions, has no scholarly peer-reviewed research to support their claims of efficacy. Anecdotally, if I had a choice in my sexual orientation, I would have chosen to be straight in hopes of avoiding the years of hallway gossip and locker room insults in my hometown. It wasn't uncommon to hear boys in my school say "don't be queer" and for boys and girls to ask, "you don't have girlfriend? what are you gay?" Growing up in that environment, I didn't really know what gay meant except that I would be bullied or socially ostracized if I were labeled as gay. But no matter, how hard I tried to pray and follow hometown traditions of heterosexuality, I couldn't change my attractions much like other LGBT folks have tried before and after I did.

I have also heard opposition posit that passing this bill would turn LGBT folks as a special class as if to place them above all other North Dakotans. I would argue that this bill would place LGBT North Dakotans on a more level playing field with heterosexual neighbors and family members to pursue the same rights and responsibilities of working and living in North Dakota. As I said earlier, I'm a big picture person as part of my professional training. "Minority stress" is a term that has been in mental health research for decades and in a nutshell it is a term that labels the adverse effects of being of a minority identity as a result of everyday discrimination; if you'd like to add to your library, I recommend Melanie Hoeffert's memoir *Prairie Silence* which chronicles the authors experience of reconciling her North Dakota upbringing with her sexual orientation. Minority stress is correlated with higher rates of mental illness, substance abuse, and suicide rates. Living in North Dakota, growing up in a Lutheran tradition, I saw no positive representation or conversation about LGBT identities and relationships. I though I was the only person to have same sex attractions and fell into the trap that I

was somehow defective. I'll ask you to pause and think what your daily life might be like if you carried the belief that you were defective over a week. It probably wouldn't be positive. Imagine living with that belief over a lifetime, and you could imagine that this would result in challenges to your health.

All of this relates to the bill before you today because cultural expectations do not stop at the door to your workplace or your home. Senator Hogue, shared last month that he wasn't able to find any examples of workplace discrimination. I find this ironic because passing this bill would allow all of us to keep track of complaints through the Department of Labor. Without any sort of protection, in the form of legal recourse, LGBT North Dakotans have been tacitly asked to risk outing themselves at work while they have the most to lose as a result of speaking up. Anecdotally, as a community advocate, I have spoken with many LGBT folks in Fargo that just want to live their lives as they are without the added hassle of fighting to be treated equally like their heterosexual or cisgender family members and colleagues.

Although I was able to come out to myself, I still didn't feel like I was welcome in ND because no one was talking about LGBT North Dakotans. I had tried so hard for so long to fit in that I decided to give myself a break by living abroad for a year in South Korea teaching English. It was a privilege to live abroad because I met so many diverse people and felt like it was safe for me to publicly share that I was gay; people were more shocked by the fact that I was North Dakotan more so than I was gay...they had never seen one of us before. Living in this environment, I found the support and affirmation I needed to integrate all of the parts of my identity. As a result, my mental health improved, my self confidence went up, and I was and am happy with who I am.

Within the next year, I am hoping to launch myself into the workforce as a family therapist; I love the work I have done as a intern therapist. I get to meet people in difficult circumstances related to their mental health, relationship status, and the social forces that influence their lives. I want to work and will work thanks to the Protestant work ethic I developed in part thanks to being North Dakotan. Sadly, I have also seen my masters degree as a ticket out of North Dakota, because I have fought to be the person you see before you today. I am not willing to sacrifice my physical and mental health or my career development if I have to fight to be treated like my heterosexual family members, neighbors, and colleagues. I just want to live my life like anyone else.

SB 2279
3-22-15

B

#2

Members of the House Human Services Committee

I am grateful for the opportunity to share very briefly my thoughts regarding proposals seeking to add language to a bill that would seek to ban discrimination regarding sexual orientation and gender identity, specifically SB 2279.

I'm Tim Johnson, a semi-retired pastor in the Evangelical Lutheran Church in America. (Coincidentally, my college major was Political Science with an emphasis in Constitutional Law. Unfortunately, that was so long ago it has not provided much help).

Of course, the real tragedy of all this is that we feel the need to delineate the various forms discrimination takes. It is as old as human society. Some powerful part of society has decided to look down on another, restrict its participation, declare it dangerous, degenerate, undeserving of the laws that protect the rest of us.

The gain of such action through history is mystifying. Discrimination's sole purpose and accomplishment is to grant power to a single group: be it male, white, wealthy, a particular religion or religious viewpoint, a particular political philosophy. Without exception, societies have been diminished politically, economically, and spiritually by acts of discrimination.

This is particularly disturbing when it happens among those who profess Christianity, the following of one named Jesus. In a world that discriminated against women, the poor, the sick, the outcasts, the powerless of every sort, Jesus welcomed them, healed them, loved them, made them disciples. If you've got time, I'll say more about the rag tag bunch of rebels he called to be his inner circle.

To close, a line from this Jesus:

Come to me all who are weary and heavy laden, and I will give you rest.
(another possibility: there is neither Jew nor Greek, neither slave nor free, for all are one in Christ Jesus) So, where shall we find ourselves and who shall we find ourselves next to?

Thank you for your time and consideration.

Tim Johnson, Pastor
Evangelical Lutheran Church in America

SB 2279
3-23-15

#3

Members of the ND State Human Services Committee in the ND State Legislature,

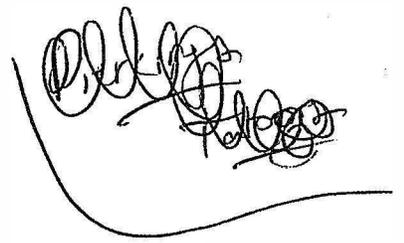
I write to you today to implore you to act on behalf of North Dakotans in a manner of equality, integrity, and simple human decency. On the national level, equal rights have long been a fundamental cornerstone of our society, and our state has also prided itself on being North Dakota Nice on the surface. But in reality, if we as a state don't fight for a ALL residents of our state, and pave the way for TRUE equality, there's nothing "nice" about us.

Opposition to equality often argues the religious mindset, but as legislators, you weren't elected to instill religious doctrine... In fact, you've sworn to keep church and state separate. So the fundamental arguments to shouldn't come into play here. Rather think of the civil rights... Constitutional equalities, and take a stand alongside your North Dakotan brothers and sisters who work in our economy, contribute to our tax base, add compassion to our neighborhoods, and deserve the same rights as others in their schools, communities, and our great state of ND.

It was once allowed to ban women from voting in an election. What if legislators just like you didn't seek equality for women all those years ago and fight for what is right? Your committee, our State, and our Nation would be a different place had elected officials not done the right thing. So I encourage you to do the right thing today, and stand up for equality and I encourage you to please VOTE YES on SB 2279. It's time to end discrimination and do the right thing. Our future ND, the future of our kids and grandkids, is in your hands.

Sincerely,
Karyn Hippen
Lifelong North Dakotan,
US Navy Veteran,
Proud mom of gay son,
And Mayor of Thompson, ND

SB 2279 #4
3-23-15



Mr Chairman & Members of the committee

My name is Kyle Thorson & I am a resident of Grand Forks.

I wanted to share a couple letters on behalf of people who support 2279 but could not be present today. I will be happy to share copies of each letter with you after today's testimony.

Imagine putting a picture of your partner or family on your desk & ~~now~~ or ~~holding~~ their hand in public. Now imagine because of those simple acts of love, your boss tells you that you're fired.

Every act of love becomes a conscious decision of whether or not it is safe to show that at any given moment.

This is a lived reality for many LGBT people.

Ask for a Do Pass

* FB notes?

* Emily Noether was a woman who in the early 1900s revolutionized mathematics but b/c she was a woman, n
would hire her.

SB2279

3-23-15

#5

B



TJ Jerke
N.D. Human Rights Coalition
Subject: Support of Senate Bill 2279
March 23, 2015
House Human Services Committee

Chairman Weisz and members of the Human Services Committee. My name is TJ Jerke, I am the Legislative Coordinator for the North Dakota Human Rights Coalition.

The North Dakota Human Rights Coalition is a broad-based coalition of individuals and organizations around North Dakota. Since 2002, the Coalition has been passionately working to effect change so that all people in North Dakota enjoy full human rights. The Coalition deeply values mutual respect for all people, seeking a common good without denying individual rights, and proactively promoting social and economic justice.

I stand here in support of Senate Bill 2279. Please, give this important legislation your full consideration and a Do Pass recommendation.

Human rights are rights inherent to all human beings, no matter who you are, or what you believe. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Human rights law lays down obligations of Governments to act in certain ways, or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

Today, you are in a position to ensure that you as elected officials, and this state, do just that.

We've all heard that some inside our Capitol are unaware of discrimination taking place in North Dakota. You have heard the heartbreaking stories today, and I briefly want to point you to two more.

As you have heard, a majority of North Dakota voters - 59 percent - support Senate Bill 2279. I have with me more than 1,000 letters from North Dakota residents in support of this bill. I submit this stack of letters, which comes from mothers, fathers, sisters, brothers, neighbors, employers and many more who believe that discrimination is not a North Dakota value, and want to see this bill passed.

Although we are in the Human Services Committee, Senate Bill 2279 is a business bill. To reiterate this fact, Don Morton, the site leader for Microsoft's Fargo campus - has asked the North Dakota Human Rights Coalition to read a letter on his behalf.

When asked what the danger would be if this bill doesn't pass, successful North Dakota businessman Doug Burgum said:

"Currently, North Dakota has over 23,000 job openings. From an economic impact, filling these jobs would be like adding another large city to our state. Every policy the legislature is considering should be viewed through a lens of supporting workforce development in the state. After decades of watching the majority of our North Dakota University System graduates leave the state, we are now in new territory. We are not producing enough graduates to fill all the open positions in the state. We need population growth by both retention and net in-migration to fulfill our enviable growth needs. The aged 18-35 year old demographic is particularly attuned to the social climate of our cities and state. Any laws we have that discriminate against or limit the rights of any citizens based on gender orientation create a barrier for recruiting and retaining talent in our state."

Mr. Chairman and members of the committee, the last point I'd like to make is this. Right now, many great North Dakota companies have nondiscrimination policies that include sexual orientation and gender identity. But there are not enough companies. And while these companies - such as Wells Fargo and Montana Dakota Utilities - understand what is needed to ensure a safe, and inviting atmosphere,

without the passage of Senate Bill 2279, North Dakota's LGBT population can still be discriminated against.

The minute an employee of Wells Fargo or MDU takes a step outside of their office, they are no longer covered under their companies' policies. This means, a hardworking bank teller can still go home, and find an eviction notice on his door, despite the companies' wonderful policies.

Please, put in place a statewide nondiscrimination law so that all North Dakota residents enjoy full human rights.

Thank you.

TJ

562279
3-23-15

U.S. Equal Employment Opportunity Commission

TO: **North Dakota Department of Labor
Human Rights Division
600 East Boulevard Avenue
Department 406
Bismarck, ND 58505**

Date **August 28, 2013**
EEOC Charge No.
32F-2013-00074
FEPA Charge No.
NDE1310201

CHARGE TRANSMITTAL

SUBJECT:

Frank Cavalieri
Charging Party

v. WATCO COMPANIES
Respondent

Transmitted herewith is a charge of employment discrimination initially received by the:

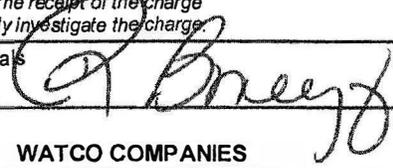
EEOC _____ on May 15, 2013
Name of FEPA *Date of Receipt*

- Pursuant to the worksharing agreement, this charge is to be initially investigated by the EEOC.
- Pursuant to the worksharing agreement, this charge is to be initially investigated by the FEPA.
- The worksharing agreement does not determine which agency is to initially investigate the charge.

- EEOC requests a waiver FEPA waives
- No waiver requested FEPA will investigate the charge initially

Please complete the bottom portion of this form to acknowledge the receipt of the charge and, where appropriate, to indicate whether the Agency will initially investigate the charge.

Typed Name and Title of EEOC or FEPA Official
Julie Schmid, Acting Director

Signature/Initials


Frank Cavalieri
Charging Party

v. WATCO COMPANIES
Respondent

TO WHOM IT MAY CONCERN:

- This will acknowledge receipt of the referenced charge and indicate this Agency's intention to initially investigate the charge.
- This will acknowledge receipt of the referenced charge and indicate this Agency's intention not to initially investigate the charge.
- This will acknowledge receipt of the referenced charge and request a waiver of initial investigation by the receiving agency.
- This will acknowledge receipt of the referenced charge and indicate this Agency's intention to dismiss/close/not docket the charge for the following reasons:

Typed Name and Title of EEOC or FEPA Official
Kathy Kulesa, Director

Signature/Initials

TO: **Minneapolis Area Office
330 South Second Ave
Suite 720
Minneapolis, MN 55401**

Date **August 28, 2013**
EEOC Charge No.
32F-2013-00074
FEPA Charge No.
NDE1310201

Jack Dalrymple
Governor

Tony J. Weiler
Commissioner



State Capitol, 12th Floor
600 E. Boulevard Ave., Dept. 406
Bismarck, ND 58505-0340

www.nd.gov/labor
www.nd.gov/humanrights

MEMORANDUM

Date: May 15, 2013

To: Julie Schmid
Equal Employment Opportunity Commission
Towle Building
330 South Second Avenue, Suite 720
Minneapolis, MN 55401-2224

From: Brenda Halvorson, Investigator
North Dakota Department of Labor
600 East Boulevard Ave., Dept. 406
Bismarck, ND 58505-0340

Subject: Transfer of Charge

Charge No. NDE1310201 32F-2013-00074

Parties: Cavalieri v. Watco Companies

Please find the above referenced subject material enclosed. We are forwarding said subject matter to your office for processing for the following reason:

- Lack of jurisdiction.

Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Halvorson".

Brenda Halvorson
Investigator

Encl.

Jack Dalrymple
Governor

Tony J. Weiler
Commissioner



State Capitol, 12th Floor
600 E. Boulevard A.E. Dept.
Bismarck, ND 58505-0340

www.nd.gov/labor
www.nd.gov/humanrights

May 15, 2013

Tom Hayes, Associate General Counsel
Watco Companies
315 W 3rd St
Pittsburg KS 66762

Re: ND#: NDE1310201

EEOC#: 32F-2013-00074

CAVALIERI V. WATCO COMPANIES

Dear Watco Companies:

A charge of employment discrimination has been filed with the North Dakota Department of Labor (NDDOL) against your entity. A copy of this charge is enclosed. This charge has been transferred to the Equal Employment Opportunity Commission (EEOC), Minneapolis Area Office, Towle Building, 330 South Second Avenue, Suite 720, Minneapolis, MN 55401-2224. Their toll-free telephone number is 1-800-669-4000.

You will be contacted by the EEOC in the near future. Please cooperate with them as they process this charge. The EEOC will investigate and resolve the charge. Their final determination may be adopted by the NDDOL.

Please direct all inquiries and correspondence to the EEOC. It is unnecessary to submit any information to the NDDOL unless you are informed otherwise.

If you have any questions, please call me at 701-328-2626 or at 1-800-582-8032.

Sincerely,

A handwritten signature in black ink that reads "Brenda Halvorson". The signature is fluid and cursive.

Brenda Halvorson
Investigator

Enclosure

SB2279

3-23-15

EEOC Form 212-A (3/99)

U.S. Equal Employment Opportunity Commission

TO: North Dakota Department of Labor
600 East Boulevard Ave. Dept. 406
Bismarck, ND 58505-0340

Date January 13, 2015
EEOC Charge No.
32F-2015-00046
FEPA Charge No.
NDE1506171

CHARGE TRANSMITTAL

SUBJECT:

Kenneth Winter v. TWO BIT RENTALS
Charging Party Respondent

Transmitted herewith is a charge of employment discrimination initially received by the.

EEOC _____ on Jan 05, 2015
Name of FEPA Date of Receipt

- Pursuant to the worksharing agreement, this charge is to be initially investigated by the EEOC.
- Pursuant to the worksharing agreement, this charge is to be initially investigated by the FEPA.
- The worksharing agreement does not determine which agency is to initially investigate the charge.
- EEOC requests a waiver FEPA waives
- No waiver requested FEPA will investigate the charge initially

Please complete the bottom portion of this form to acknowledge the receipt of the charge and, where appropriate, to indicate whether the Agency will initially investigate the charge.

Typed Name and Title of EEOC or FEPA Official Julie Schmid, Acting Director
Signature/Initials KSS, F

Kenneth Winter v. TWO BIT RENTALS
Charging Party Respondent

TO WHOM IT MAY CONCERN:

- This will acknowledge receipt of the referenced charge and indicate this Agency's intention to initially investigate the charge.
- This will acknowledge receipt of the referenced charge and indicate this Agency's intention not to initially investigate the charge.
- This will acknowledge receipt of the referenced charge and request a waiver of initial investigation by the receiving agency.
- This will acknowledge receipt of the referenced charge and indicate this Agency's intention to dismiss/close/not docket the charge for the following reasons:

Typed Name and Title of EEOC or FEPA Official Julie Schmid, Acting Director
Signature/Initials

TO: Minneapolis Area Office
330 South Second Ave
Suite 720
Minneapolis, MN 55401
Date January 13, 2015
EEOC Charge No.
32F-2015-00046
FEPA Charge No.
NDE1506171

RECEIVED
JAN 16 2015

ND Dept. of Labor & Human Rights
Bismarck, ND

<p>CHARGE OF DISCRIMINATION</p> <p><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small></p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p><input checked="" type="checkbox"/> FEPA NDE1506171</p> <p><input checked="" type="checkbox"/> EEOC 32F-2015-00046</p>
--	---

North Dakota Department of Labor and Human Rights and EEOC
State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.) Kenneth Winter	Home Phone (Incl. Area Code) (916) 692-6598	Date of Birth
---	---	---------------

Street Address PO Box 2504, Williston, ND 58802	City, State and ZIP Code
---	--------------------------

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name TWO BIT RENTALS	No. Employees, Members 15 - 100	Phone No. (Include Area Code)
--------------------------------	---	-------------------------------

Street Address 5426 134th Ave NW, Williston, ND 58801	City, State and ZIP Code
---	--------------------------

Name	No. Employees, Members	Phone No. (Include Area Code)
------	------------------------	-------------------------------

Street Address	City, State and ZIP Code
----------------	--------------------------

<p>DISCRIMINATION BASED ON (Check appropriate box(es).)</p> <p> <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify) </p>	<p>DATE(S) DISCRIMINATION TOOK PLACE</p> <p>Earliest Latest</p> <p>03-15-2014 09-17-2014</p> <p><input type="checkbox"/> CONTINUING ACTION</p>
---	---

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began working for the Respondent as a Roll Off Driver on January 28, 2014. Shortly after starting work, I became the object of crude jokes by several staff, including: William Chamley (Owner), Anita Sandberg (General Manager), Jennifer I/n/u (Human Resource Director), Brenda Wolds (Dispatcher, and my immediate supervisor), Craig Clairmont (Lead Mechanic), and Jeremy I/n/u (diesel mechanic). The jokes involved crude and ongoing conversations about my sexual orientation, with the apparent attempt to belittle me by labeling me as a gay man. I am not a gay man; I am a heterosexual man.

In April 2014, Brenda Wolds and Anita Sandberg (General Manager) invited me to a wine tasting venture to find out for themselves if in fact I was gay. I declined their invitation.

(cont'd)

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> <p>I declare under penalty of perjury that the above is true and correct.</p>	<p>NOTARY - When necessary for State and Local Agency Requirements</p> <p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT</p> <p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">JAN 07 2015</p> <p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">JAN 16 2015</p> <p style="text-align: right;">ND Dept. of Labor & Human Rights Bismarck, ND</p>
--	---

01/05/2015 *Kenneth Winter*

Date Charging Party Signature

CHARGE OF DISCRIMINATION	Charge Presented To: Agency(ies) Charge No(s):
<small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>	<input checked="" type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC
	NDE1506171 32F-2015-00046

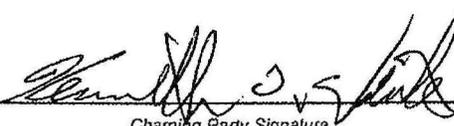
North Dakota Department of Labor and Human Rights and EEOC
State or local Agency, if any

Jeremy threatened to kill me if I were ever to touch him. Craig Clairmont continuously put off repairs to my truck, and in one instance, appeared to have deliberately done a repair incorrectly, which could have affected the operation of my truck.

I was informed by other employees that there were many conversations going on behind my back about my sexual orientation. I complained of the harassment but nothing was done about it.

On September 17, 2014, I was compelled to quit my job due to the ongoing harassment and hostile working environment.

I believe I have been discriminated against in violation of the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) as amended, and Title VII of the Civil Rights Act of 1964, as amended.

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> <p>I declare under penalty of perjury that the above is true and correct.</p>	<p>NOTARY - <i>When necessary for State and Local Agency Requirements</i></p> <p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT</p> <p>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE <i>(month, day, year)</i></p>
<p>01/05/2015 </p> <p style="text-align: center;"><small>Date Charging Party Signature</small></p>	<p>RECEIVED</p> <p>JAN 07 2015</p>

ND Dept. of Labor & Human Rights
Bismarck, ND

SB2279

3-23-15

Halvorson, Brenda J.

From: Kenneth Winter [kennethwinter38@yahoo.com]
Sent: Saturday, January 10, 2015 10:04 PM
To: Halvorson, Brenda J.
Subject: Re: Referral to EEOC

Thank you Brenda for responding to my voice mail and giving me clarification in what is happening with my discrimination complaint.

Sincerely,

Kenneth T Winter

From: "Halvorson, Brenda J." <bjhalvor@nd.gov>
To: Kenneth Winter <kennethwinter38@yahoo.com>
Sent: Saturday, January 10, 2015 6:02 AM
Subject: Referral to EEOC

Kenneth: I am responding to your voicemail message from January 9, 2015. You asked for an explanation of why your charge of discrimination has been referred to the EEOC for investigation.

We have a work-share agreement with the EEOC. We process and investigate discrimination cases that we have jurisdiction over in ND. Because your complaint contains allegations that you were "regarded as" being "a gay man," we needed to refer your case to the EEOC as we do not have authority to investigate this allegation, and the EEOC does have the authority to investigate it. ND does not have *sexual orientation* as a protected class, and your "regarded as being a gay man" allegation would fall under that category.

Please contact the EEOC office if you have any questions about your case. We have transferred all of the information to them that you provided to us.

Thanks.

Brenda Halvorson
North Dakota Department of Labor and Human Rights
State Capitol - 13th Floor
600 E Blvd Ave, Dept 406
Bismarck, ND 58505-0340

Direct Line: 701-328-2626
Fax: 701-328-2031
Email: bjhalvor@nd.gov

Confidentiality Notice: This e-mail and any attachments thereto is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information subject to protection under the law. If you are not the intended recipient of this e-mail, you are hereby notified any dissemination, distribution or copying of this e-mail and any attachments is strictly prohibited. If you receive this e-mail in error, please notify me immediately and permanently delete the original copy and any copy or printout of same. Thank you.

3-23-15



March 23, 2015

To: House Human Services Committee

Re: Support for SB2279

From: Don Morton

As a company Microsoft has some experience and a clear point of view as it pertains to diversity.

First, we understand the critical role that diversity plays in our day-to-day business. Within the workplace, diversity is a powerful concept that's still evolving, and we know that it requires more than a conversation about numbers alone. But there is no substitute for our employees' diverse backgrounds, perspectives, skills and experiences when it comes to understanding customer needs, developing new products or designing successful marketing campaigns. In short, the diversity of our workforce is an important bridge to the global marketplace. If the state of North Dakota discriminates based on sexual orientation and gender identity this puts our Microsoft Campus in Fargo at a big disadvantage. Senate Bill 2279 is a huge step in the right direction.

Second, we recognize the importance of recruiting and retaining the best employees. We operate in fast-moving and very competitive markets, and having access to the best talent is critical. To recruit the best talent we need to create an environment in which everyone is welcome and valued.

Third, we're committed to treating all of our employees equally. In 1993, Microsoft became the first Fortune 500 Company to provide same-sex domestic partnership benefits. Our commitment to treating all our employees equally has helped our business grow as well as being the right thing to do.

But there is still more that needs to be done. Laws across the U.S. and around the world that discriminate based on sexual orientation and gender identity can impact the day-to-day lives of our employees, and they make it harder to treat every employee and their family equally. We're a global business and we need to manage our talent on a global basis. We ask employees to move to other states or

take on international assignments based on our business needs or to accelerate their experience and development. For our LGBT employees and their families, there can be significant challenges in states or countries that discriminate based on sexual orientation and gender identity.

We believe the business arguments for diversity and inclusiveness are clear and compelling on their own. Of course, the business case is only one part of the argument. Diversity, inclusiveness and equal treatment are also fundamental values more broadly, and this too underpins our commitment to support our LGBT employees.

Thank you for your service to our state.

Don Morton

Don Morton | Site Leader | **Microsoft** | tel: 701-281-6995 |
don.morton@microsoft.com



3-23-15

BURGUM ADVOCATES PASSAGE OF SENATE BILL 2279

by Chris Hennen March 11th, 2015 | [Contact](#)



ESTEEMED BUSINESS LEADER FAVORS DISCRIMINATION PROTECTION FOR LGBT CITIZENS IN NORTH DAKOTA

One of Fargo's most successful business leaders and entrepreneurs is advocating that the North Dakota House of Representatives pass Senate Bill 2279, which would enact discrimination protections based on sexual orientation and gender identity.

Doug Burgum, who has supported many Republican candidates, led Great Plains Software in the early 1980s until the local company was sold to Microsoft in 2001 for \$1.1 billion. More recently, Burgum has been committed to downtown Fargo development as founder and chairman of the Kilbourne Group.

Last August, Burgum gave the keynote address at the State of Technology Conference organized by U.S. Senator John Hoeven and the Fargo, Moorhead, West Fargo Chamber of Commerce. Burgum spoke of the crucial actions the State of North Dakota needs to take to remain competitive in business, attract new businesses and retain young workers.

One of issues he discussed was eliminating the state's ban on same sex marriage, which may help attract talented workers to the state. Following up on this, HPR sought his views as a business leader on Senate Bill 2279, which passed the North Dakota Senate and will soon see a vote in the House of Representatives where it faces a tougher battle.

High Plains Reader: How important is it the North Dakota House pass SB2279, which would grant discrimination protection to citizens based on sexual orientation and gender identity?

Doug Burgum: The passing of this bill is an important message to all of our citizens, that we as a state will protect the rights of ALL citizens. And it would bring the laws of the state in line with the best practices of some of our largest employers like Microsoft, which has had internal policies against discrimination for decades.

HPR: What would be the danger if it didn't pass? What effect would it have?

DB: Currently, North Dakota has over 23,000 job openings. From an economic impact, filling these jobs would be like adding another large city to our state. Every policy the legislature is considering should be viewed through a lens of supporting workforce development in the state. After decades of watching the majority of our North Dakota University System graduates leave the state, we are now in new territory. We are not producing enough graduates to fill all the open positions in the state. We need population growth by both retention and net in-migration to fulfill our enviable growth needs. The aged 18-35 year old demographic is particularly attuned to the social climate of our cities and state. Any laws we have that discriminate against or limit the rights of any citizens based on gender orientation create a barrier for recruiting and retaining talent in our state.

HPR: You recently spoke about the state's need to get rid of regressive social policies in order to lead in business in the future. Do you get any feedback from that, good or bad?

DB: During my keynote last year at the Chamber's State of Technology Conference, I spoke out mid-speech in support of equal rights for all in North Dakota, and the audience response was to break out into sustained applause. The vast majority of feedback I received afterward was positive.

HPR: Why do you think Republican leaders in the state are so averse to changing these social policies that gay and lesbian advocates say are harmful?

DB: There is an emerging set of courageous voices in the North Dakota Republican leadership, starting with Robert Harms, state chairman of the Republican Party, who has spoken out on the need for equal rights, inclusion and tolerance without diminishing rights of others — a challenge, but one that can be crafted. More leaders in both parties need to hear that policies discriminating against any segment of citizenry are bad for all of us, not just those whose basic rights are being denied.

HPR: What effect does a gay marriage ban or limited discrimination protections for LGBT residents have on doing business in North Dakota?

DB: The No. 1 impact of a gay marriage ban, and not having discrimination protections, is the impact on all North Dakota families whose sons and daughters are denied basic rights afforded to them in many other states.

The second impact is the loss of a much-needed workforce talent pool in North Dakota. That talent pool includes not only those individuals and couples directly affected by these bans and lack of protections, but also those who support these groups, including family members, friends and the majority of young people.

The third issue is that these laws, or lack of laws, are bad for the North Dakota "brand." Rather than being the welcoming, friendly state we profess to be, the gay marriage ban and lack of discrimination protections are like a billboard saying, "We are intolerant if you don't fit a narrow image of acceptance," or "Don't stay or move here, you aren't welcome." And again this legally defined position of non-acceptance and intolerance is an increasingly pivotal issue for a growing portion of the entire population.

HPR: Do you believe public opinion on the matter has changed in the last few years in North Dakota?

DB: If you look at the data nationally, and in North Dakota, support for non-discrimination, this is one issue that is very much defined by generational attitudes and beliefs. Millennials strongly support gay marriage and gay rights, and this support is less prevalent among our oldest living citizens. So over time, the issue of equal rights will make steady progress. Some elected leaders are acknowledging the shift in sentiment and are changing their votes to more accurately represent their constituents. Demographically, North Dakota urban areas have more youth than rural areas, so elected officials from the state's largest cities will need to especially be in tune to the shifting voter sentiment in their districts.

HPR: Is there any danger for business leaders to speak out on controversial issues? Do more not speak out for fear of offending customers or business partners?

DB: The issue of equal rights has been very politicized, and since nearly every business serves customers across party lines as well as independents, it is the conventional wisdom that speaking out on a controversial issue is bad for business. The flip side of this particular topic is that taking a stand, as we did at Great Plains (now Microsoft) in the 1990s, by providing full spousal benefits for domestic partners, which can be very good for recruiting and retaining talent. Plus, it is the right thing to do in terms of living up to the American ideal of equal human rights for all.

SB2279

3-23-15



Human Rights Statement

At Wells Fargo, our vision is to satisfy all our customers' financial needs and help them succeed financially. We also are committed to conducting our business ethically and with integrity. Consistent with our [Vision and Values](#), Wells Fargo recognizes that governments have the duty to protect human rights, and our company has a responsibility to respect human rights. To that end, we strive to respect human rights throughout our operations, products and services, including consistent treatment among people, employee well-being and security, economic and social freedom, and environmental stewardship. We seek tangible ways to apply these principles through our actions and relationships with our team members, customers, suppliers and communities in which we do business.

Our Commitment

Wells Fargo's ongoing respect for human rights reflects our vision and values. We recognize that respecting human rights is a continuing effort, and we must regularly assess our practices and approaches in light of changing global policies and business practices. This effort is done with the understanding that in some circumstances we may go above and beyond what the law and industry standards require. We are dedicated to corporate social responsibility and strive to uphold human rights in all our business activities.

Our Team Members

We respect the human rights of our team members. We strive to foster [safe, inclusive and respectful workplaces](#), including building and maintaining sustainable work environments where discrimination and harassment are not tolerated. We provide equal employment opportunities for all qualified applicants and team members without regard to any status protected by applicable laws.

Building and sustaining a diverse and inclusive culture for team members at Wells Fargo is an important way in which human rights are respected at our company. Diversity and inclusion are core Wells Fargo values. Senior leaders are engaged in setting diversity and inclusion goals, and our CEO chairs the company's Enterprise Diversity Council to ensure progress in this important area.

We regularly review and refine our workplace practices and policies as part of our goal of delivering equal opportunity and safe, healthy and sustainable workplaces to all team members. This reflects our belief that the success of our company is tied to the satisfaction and well-being of our team members.

Our Customers

We value what is right for our customers in everything we do. We are committed to building relationships with customers and work hard to provide them with meaningful products, advice and guidance to ensure they are able to make informed financial choices.

At the core of this commitment, we expect our team members to adhere to our [Code of Ethics and Business Conduct \(PDF\)*](#), and believe that honesty, trust and integrity should guide our business activities. We regularly monitor and refine our business practices to help ensure all team members are performing ethically and with integrity.

Wells Fargo is dedicated to living by [fair and responsible lending](#) and servicing principles to foster best practices and ensure consumers are treated with respect. We consistently follow business practices we believe serve the interests of our customers for the long term. We do not tolerate abusive, misleading or fraudulent lending.

Wells Fargo strives to engage with business customers that respect human rights. We recognize the critical economic importance of various industry sectors, including some that may have significant impacts on the environment and local communities. We believe organizations in such industries should operate in a responsible manner, complying with applicable legal requirements and with respect for human rights, local communities and the environment. We conduct enhanced due diligence for corporate customers in identified sensitive industries, as set out in our [Environmental and Social Risk Management Statement \(PDF\)*](#).

Our customers trust us with some of their most sensitive personal information, and to that end, we have developed and implemented extensive [privacy and information security policies](#).

Our Suppliers

Wells Fargo has a strong [Supplier Code of Conduct \(PDF\)](#)*. While we recognize that each supplier will have varying policies and approaches to human rights, we strive to engage with those suppliers whose values and business principles reflect their respect for the human rights of the people with whom, and the communities in which, they do business.

Our Communities

We respect human rights by using our financial and human capital to support economic development and improve quality of life in the communities where we operate.

Community investment is an important part of our business model, and we strive to provide resources, talent and products for underserved communities in the areas in which we do business. This includes regular assessments of our products and services to ensure that they are sold and serviced responsibly.

We are committed to managing the environmental impacts of our operations so the natural resources we use today are protected and preserved for future generations. Our environmental stewardship includes measureable goals for our operations.

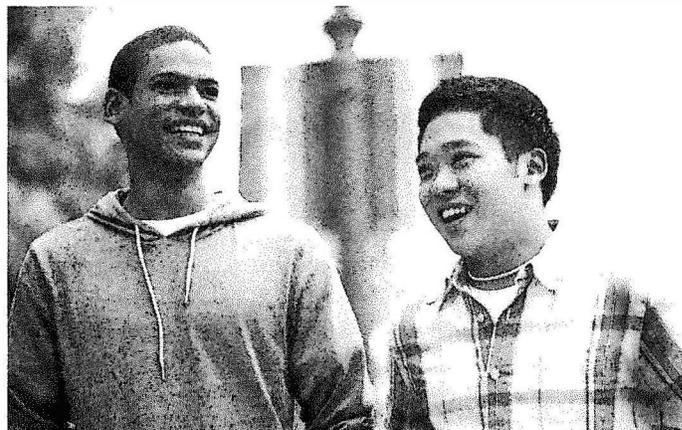
* You need Adobe® Reader® to read PDF files. [Download Adobe Reader](#) for free.

Empowering the LGBT community to help them succeed financially

Diversity is part of our business

Wells Fargo is dedicated to building and sustaining a diverse and inclusive culture for all our team members. One where they all feel valued and respected, not only for who they are, but for the skills and experiences they bring to their positions. Our commitment to diversity also helps us better understand our customers, see new business opportunities, and succeed in serving the needs of our expanding customer segments.

- In 2013, total buying power of the U.S. LGBT adult population was projected to be \$830 billion.
- Approximately 6 to 7% of the adult U.S. population self-identifies as LGBT – between 15 to 16 million adults 18 years or older. Recent census data reports that 20% of same-sex couples are raising children under age 18.
- Because of varied relationship status nationwide, LGBT Americans face unique financial challenges, raising major estate, pension, tax, and property-ownership questions.



- A company's LGBT employment policies are often viewed as an important demonstration of commitment to a community that lacks national employment discrimination protections.

Sources: Witeck Communications/Harris Interactive 2013 LGBT consumer analysis; Williams Institute U.S. Census 2010 analysis.

Helping LGBT communities thrive

- **Support for small business.** Wells Fargo is the #1 small business lender in the U.S.* and is committed to helping LGBT business owners access capital and financial resources. In 2004, Wells Fargo became the first financial institution to join the National Gay and Lesbian Chamber of Commerce (NGLCC), an organization created to better address the financial and educational needs of LGBT-owned businesses. In 2014, Wells Fargo committed to extending \$100 billion in new lending to small businesses across America.

Corporate giving. In 2013, Wells Fargo invested \$275.5 million in 18,500 nonprofits, educational programs, and schools.

- **Community support.** Wells Fargo continues to strengthen its relationship with the LGBT community through marketing and sustained community outreach efforts, including relationships with:

- Gay, Lesbian & Straight Education Network (GLSEN)
- Human Rights Campaign (HRC)
- National Gay and Lesbian Chamber of Commerce (NGLCC)
- National Center for Lesbian Rights
- Out & Equal Workplace Advocates
- It Gets Better™ Project

- **Pride support.** Since 1992, Wells Fargo has participated in hundreds of Pride parades and events, including appearances by the iconic Wells Fargo Stagecoach. In 2013, Wells Fargo continued its legacy of support with sponsorships of more than 50 local Pride parades and celebrations across the country.

* For loans under \$100,000, loans under \$1 million, and in low-and moderate-income neighborhoods for both lending categories. (Community Reinvestment Act (CRA) government data, 2013).

Empowering the LGBT community to make informed financial decisions

Accredited Domestic Partnership Advisor.SM Wells Fargo collaborated with the College for Financial Planning and developed and launched the Accredited Domestic Partnership Advisor (ADPASM) program in 2009. Wells Fargo Financial Advisors were the first in the industry to earn this certification and continue to offer LGBT clients guidance on key domestic partnership issues, including joint ownership of property, beneficiary designations, trust services, and other arrangements.

<https://www.wellsfargoadvisors.com/wfa/adpa.htm>

“The Advocate Money Minute” presented by Wells Fargo. Working in collaboration with *The Advocate*, Wells Fargo bankers and financial advisors offer perspective and guidance on various financial topics as they relate to the LGBT community.

<http://www.advocate.com/MoneyMinute/>

LGBT Financial Guides. Created specifically for the LGBT community, this comprehensive educational resource covers general topics such as money management, homeownership, starting a business, and tools such as estate planning guidance for gays and lesbians, and a domestic partner checklist.

A place for LGBT team members to thrive

Team Member Networks. Our team members are passionately committed to diversity and many participate in the company’s nine Team Member Networks. Wells Fargo’s LGBT Team Member Network known as PRIDE includes 50 chapters. Wells Fargo’s Team Member Networks align with the company’s market segments and business strategies, and serve as a resource to champion diversity throughout the organization by promoting awareness and understanding within and across segments. Established in 1992, PRIDE has offered LGBT team members professional and career development, mentoring and leadership engagement, and opportunities to plan and participate in LGBT community outreach and events.

Employment Non-discrimination Act. In alignment with Wells Fargo’s commitment to employment fairness and equality for each one of our team members, the company joined with the Human Rights Campaign’s Business Coalition for Workplace Fairness in support of the passage of the Employment Non-discrimination Act of 2009 (ENDA), which prohibits discrimination against employees on the basis of sexual orientation or gender identity.

Team Member Self-Identification. Wells Fargo team members have access to an online Personal Information page where they

can verify their race/ethnicity and gender, provide personal information such as cell phone number, give an alternate name (e.g., Bill versus William), and identify if they are a veteran or have a disability. Recent enhancements to the Personal Information page have been made in allowing team members to confidentially and voluntarily self-identify their sexual orientation and gender identity.

LGBT Leaders Program. In 2011, the company launched a new leadership program for its LGBT team members. This three-day program, which is modeled after our current leadership program for other diverse segments, helps participants gain an understanding of the differences between LGBT culture and mainstream business culture, enabling them to bridge the gap while retaining their own specific cultural values and developing the leadership skills necessary for success.

Benefits and workplace equality. Since 1998, all benefits extended to spouses of team members have been extended to the domestic partners of team members. The terms “sexual orientation” and “gender identity” are included in Wells Fargo’s Equal Employment Opportunity and non-discrimination policies, reinforcing the company’s commitment to equality in the workplace. Wells Fargo is also committed to increasing diversity among all levels of management, identifying high-potential leaders at the mid- to senior-management levels and preparing them for executive roles through career development, rotation programs, mentoring, and training.

Living out our commitment to diversity and inclusion

- **DiversityInc** – 17th Top Company for Diversity; 2nd Top Company for Lesbian, Gay, Bisexual & Transgender Employees; 8th Top Company for Veteran Employees (2014)
- **Human Rights Campaign** – Perfect Score of 100 on Corporate Equality Index (2002-2013) Best Places to Work for LGBT Equality (2003-2014)
- **WorkLife Matters** – Top LGBT companies (2013)
- **HRC** – Corporate Equality Award (2012)
- **NGLCC National Business Coalition** – Trust Award (2012)
- **GLSEN** – Commitment to Diversity and Inclusion Award (2012)
- **National Gay and Lesbian Chamber of Commerce (NGLCC)** – Pinnacle Award (2011)
- **Gay, Lesbian and Straight Education Network (GLSEN)** – Corporate Champion Award (2011)
- **GLAAD Advertising Award** – Best Print Ad (2011)
- **GLAAD Media Award in Advertising** – Best Interactive Campaign (2010)
- **G.I. Jobs** – 36th of Top 50 Military Spouse Friendly Employers (2013)
- **American Banker** – Most Powerful Women in Banking; One of America’s Top Banking Teams (2013)
- **Fortune** – World’s 35th Most Admired Company (2014)
- **The Chronicle of Philanthropy** – America’s #1 Most Generous Cash Donor (2013)

Maintaining a healthy, viable, skilled work force

SB2279

3-23-15

MDU Resources' commitment to employees is based on a firm belief in the value and dignity of the individual. We maintain an environment in which each employee can perform effectively and efficiently by working for:

- Comply with applicable labor and employment laws and regulations in every market where the corporation operates.
- Provide a workplace free from discrimination, harassment, retaliation and violence.
- Recruit, hire, train, promote, discipline and discharge employees fairly and impartially based on job-related criteria without regard to age, race, color, religion, gender, sexual orientation, gender identity, national origin, disability, veteran status or any other personal characteristics determined to be a protected category under applicable state law.
- Prevent workplace injuries by adhering to applicable workplace safety laws and regulations and corporate standards.
- Maintain a workplace free from the influence of illegal drugs and abuse of alcohol or prescription drugs.
- Promote trust, pride and camaraderie in the workplace.
- Treat each other courteously and respectfully.
- Give employees timely information concerning operations and results.
- Give employees work-related information necessary for them to effectively perform their responsibilities.

Labor philosophies, policies and practices

MDU Resources has a number of policies and programs in place to help ensure that we are able to hire, develop and retain talented employees.

Employment philosophies

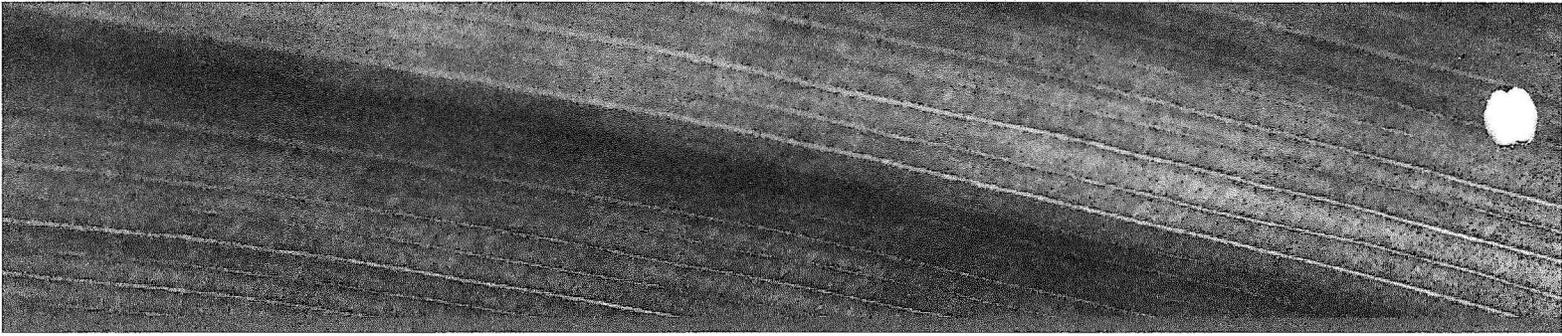
MDU Resources hires employees because they have the skills, abilities and motivation to achieve the results needed for their job. Each job is important and part of a coordinated effort to accomplish our objectives.

MDU Resources has six general philosophies that guide employees' actions:

- **Teamwork and cooperation.** A positive work environment is dependent on willing cooperation by everyone. Every employee is expected to be a positive and productive member of the work group, and to cooperate with co-workers.
- **Open communication.** An effective and responsive organization relies on knowledgeable and informed individuals. All employees are responsible for seeking out the information they need, and for willingly providing information to others in a positive and open manner.

Communication must be open and two-way. Managers are expected to be good listeners and must provide easy access to information. Employees also must be good listeners and must provide managers and co-workers easy access to information.

- **Mutual trust.** Effective teamwork and cooperation, as well as open and honest communication, is based on developing and maintaining trusting relationships. Managers must provide a work environment that encourages and supports trusting relationships. All employees must guard against prejudging, jumping to conclusions or questioning another person's motives or actions.
- **Increasing standards.** Employee skills and abilities must be continually improved upon and expanded in order to meet changing job requirements and maintain business competitiveness. Managers must stimulate positive change by providing clear performance expectations, resources for self-development, and by maintaining high standards in the selection of individuals for hire, promotion, transfer or reassignment. Employees must continually develop their skills and abilities to be able to meet ever-changing job requirements.
- **Individual responsibility.** Managers are responsible for providing a positive and supportive work environment



that encourages individual responsibility and initiative. Employees are responsible for taking advantage of the opportunities available to them, both inside and outside MDU Resources, and for working toward positive change when they have a better idea.

- Balance. Human resource philosophies, when properly applied to the various programs and practices, will assist in attaining an appropriate balance between the various needs and interests of the employees, customers and shareholders. These philosophies work together to help maintain a positive and productive work environment.

Employment policies

MDU Resources' corporate policy addresses Equal Employment Opportunity and Affirmative Action Plan practices. MDU Resources is firmly committed to the philosophy of EEO and Affirmative Action policies and is dedicated to providing equal opportunities for all employees and applicants for employment according to all EEO and Affirmative Action laws, directives and legislation. Our EEO policy ensures employees are not discriminated against based on sexual orientation or gender identity, in addition to other characteristic protections.

We will:

- Recruit, hire, train, promote, discipline and discharge persons in all job classifications without regard to age, race, color, religion, gender, sexual orientation, gender identity, national origin, disability, veteran status or any other personal characteristic determined to be a protected category under applicable state law.
- Ensure that employment-related decisions are made in accordance with the principles of equal employment opportunity by imposing only job-related requirements for employment opportunities.
- Ensure that all personnel actions, such as compensation, performance reviews, transfers, layoffs, returns from layoff, company-sponsored training, education, tuition assistance and social and recreational programs, are administered without regard to age, race, color, religion,

gender, sexual orientation, gender identity, national origin, disability, veteran status or any other personal characteristic determined to be a protected category under applicable state law.

Each MDU Resources business unit, including the corporate office, has assigned EEO coordinators.

Employee recruitment

MDU Resources uses a variety of means to recruit new employees for open positions:

- Website. MDU Resources hosts a website that contains postings of all positions within the corporation that are available to external applicants. Anyone with Internet capabilities can view and apply for available positions.
- Notify and post all external opportunities with various state Job Service organizations.
- Utilize disability, veteran, female and minority professional associations in sourcing job candidates.
- College recruitment. MDU Resources establishes partnerships and builds relationships with colleges and technical schools to hire students and promote knowledge of the corporation. Company representatives meet with career placement personnel, department heads and student clubs, as appropriate.
- Career fairs. MDU Resources and our business units also attend career fairs, as appropriate, to seek applicants for open positions.
- Advertising. MDU Resources advertises for an open position on a scale relative to the market and available talent pool. Advertising generally occurs online and in print media, including magazines and city newspapers.

Work force demographics

The number of employees at MDU Resources' businesses fluctuates during the year depending on the number and size of construction projects. As of Dec. 31, 2012, MDU Resources had 8,629 employees:

- 156 at MDU Resources.
- 994 at Montana-Dakota Utilities.
- 35 at Great Plains Natural Gas.
- 275 at Cascade Natural Gas.
- 222 at Intermountain Gas.
- 210 at Fidelity Exploration & Production.
- 393 at WBI Energy.
- 2,964 at Knife River Corporation.
- 3,380 at MDU Construction Services Group.

In total, about 46 percent of the corporation's employees are represented by collective bargaining agreements. Montana-Dakota has 353 employees and WBI Energy Transmission has 81 employees represented by the International Brotherhood of Electrical Workers. Cascade has 104 employees represented by the International Chemical Workers Union. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada represents 116 employees at Intermountain. Knife River has 43 labor contracts that represent about 590 of its construction materials employees. MDU Construction Services has 168 labor contracts representing the majority of its employees.

Governing bodies

MDU Resources' board of directors is made up of 10 men and two women. As of November 1, 2013, they range in age from 52 to 71. MDU Resources' corporate management team, referred to as the Management Policy Committee, is made up of 10 men and one woman ranging in age from 44 to 61.

Fair treatment

Diversity

MDU Resources is committed to an inclusive environment that respects the differences and embraces the strengths of our diverse employees to further our corporate vision.

MDU Resources views diversity through a broad lens. Diversity is who we are as individuals, including the differences that make each employee unique. Those differences go beyond gender and race. Diversity also includes education, background, approachability, work function, union affiliation, management status, seniority, sexual orientation, physical ability and all the other factors that make us who we are.

MDU Resources respects employees' differences and supports an inclusive culture where all employees feel valued. It is important to the corporation that all employees can contribute their full potential to help achieve our strategic objectives.

An inclusive work environment is important for several reasons. One reason is so employees can produce their best efforts, which creates results that contribute to their success and the corporation's success.

When employees use their talents and attributes to meet or exceed customers' expectations, MDU Resources can be the supplier of choice. Those employees will have made a significant contribution to our customers and to the growth and financial success of our company.

MDU Resources has three strategic goals related to diversity:

- To increase productivity and profitability. An inclusive work environment values all employees' perspectives and methods of how to accomplish work, and drives more innovative ideas that will help us solve issues effectively. An inclusive environment removes barriers to new ideas and advances integration efforts.
- To enhance collaboration efforts. An inclusive work environment allows employees to increase collaboration and cooperation, and to share best practices and ideas within our companies and across our enterprise. It also allows employees to work together to develop new ways to meet individual, customer and shareholder needs.

SB2279
3-23-15

SAY “NO!” TO INSTITUTIONALIZED DISCRIMINATION

by John Strand March 18th, 2015 | [Contact](#)

ADDING SEXUAL ORIENTATION TO OUR ENUMERATED LIST OF PROTECTED CLASSES SHOULD BE A NO-BRAINER

North Dakota, albeit late in the game, now faces an opportunity in the Legislature to turn history around and to finally afford simple and equal protections under the law to our state’s lesbian, gay, bisexual and transgender residents.

Senate Bill 2279 squeaked through the state Senate and goes before the House of Representatives next. The bill simply adds sexual orientation to the list of protected classes. As amended, Section 14-02.4-01 of the North Dakota Century Code would read as follows:

“It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, sexual orientation, status with regard to marriage or public assistance, or participation in lawful activity off the employer’s premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.”

The outcry from opponents is shrill, yet not surprising. They make it sound as if the world will come crashing down upon us if LGBT folks get some sort of equal protection against discrimination under the law. Years ago, we’d guess they would have the same objections against protections for people of color. Or women. Or marriage status. Or physical or mental capability. Or religion. Or national origin.

You get the point. Some of these same folks probably would be fighting against abolition of slavery if it were the issue of the day. But that also was properly addressed and corrected years ago.

But back to SB2279. This is not a bill creating special privilege for some people. It’s a bill to include some of our most at risk citizens and children in our protections, knowing

full well they are targets and can indeed be fired from work, evicted from housing, or refused services because of who they are and whom they love.

The United States of America is not just a democracy, we remind you. It's a democratic republic. In a simple democracy, the majority could conceivably trample a minority's rights. Call it groupthink, or mob rule, or whatever you want. In a democratic republic, the minority and or individual rights are paramount and warrant protection from harmful action of the dominating group. Plain and simple.

While opponents demand examples and proof of discrimination, the tables can be turned and the next question is to ask for proof of harm to them should SB2279 pass into law. What opponents really want is institutionalized, codified support of bigotry and narrow mindedness.

North Dakota is above that, or should be.

You see, EVERY person in our state deserves respect and ought to feel safe. Every daughter, every son, every brother, every sister. Every uncle and every aunt, every niece and every nephew. Every friend and every neighbor. Every mom and every dad.

Adding sexual orientation to our enumerated list of protected classes should be a no-brainer. But it's not, and we need to ask why? Then we need to look at who opposes such protections and ask them why? And then we need to say prayers for them because quite frankly they know not the damage they do to people close to them and to others.

These wedge issues divide us when we should otherwise be truly united. Perpetuating bigotry and discrimination is not the high road. Institutionalizing statutes that do harm or leave any people at risk to harm under the law is not the American way.

Senate Bill 2279 is not a religious issue, nor is it a carte blanche endorsement of gayness. It's a simple addition of "sexual orientation" to a long list of protected classes, rightfully so. And long overdue

SB2279

3-13-15

#6 ♡

Good morning Chairman Weisz and members of the House Human Services Committee.

My name is Suzie Bartosh. I am a 29-year-old who was born here in Bismarck at Medcenter One, now Sanford Health. I grew up on Southwood Avenue, graduated from Bismarck High School, and spent some time studying at the University of Mary.

Growing up, like everyone else, I experienced many wonderful opportunities while also facing my share of challenges. One challenge led me to North Dakota Teen Challenge. Teen Challenge is a residential recovery program located in Mandan. I thought this was my chance to overcome my struggle by being surrounded by a nurturing, friendly environment dedicated to helping individuals overcome a difficult time in their life.

Since I came out about my sexual orientation, I haven't looked back. I love who I am today: a responsible, hard working, steadfast young North Dakota woman. While I was at Teen Challenge, I was open about who I am. Sadly, the residents and Teen Challenge staff could not get passed this. Both residents and staff went out of their way to explicitly harass me. I heard, often, disgusting and hurtful words and comments.

Teen Challenge serves individuals either referred by the North Dakota Department of Corrections & Rehabilitation, or admitted with a recommendation from a psychologist, or other medical professional. Most people who enter the Teen Challenge program are given the option to either go through and complete the program, or serve out their jail sentence.

Thankfully, I was not court-ordered to be there. During my first 10 months in the program, I became a model resident. Many looked to me for inspiration and support. But with only a few months left, I was told I was required to pass a new program before I could graduate. At that point, I only had three months left before graduation so I was confused why I would need to pass a new program. I found out, the program they said I was required to pass before graduating was specifically developed for me. The ND Teen Challenge staff was creating the program, a conversion therapy program, to turn me straight.

This deplorable request by the Teen Challenge staff was a gross example of the blatant discrimination-taking place in our state.

Because of their actions, I was angry, disgusted, and confused. All my life, I had never felt accepted or normal and spent most of my life just trying to fit in and belong. I thought Christians were supposed to accept and love everybody, but they made it quite clear that I was not accepted. I often asked, "How can they teach love and hate at the same time?" It all just didn't add up in my head.

I refused to do their conversion therapy and I refused to pretend that I was somebody I am not in order to graduate from the program, so I left. Thankfully, I was not under court order. But had I been, and refused to turn straight, I would have been kicked out of the program, violating a court order, and I would have been sent to jail because of my sexual orientation.

Although it was one of the worst experiences of my life, I wanted to finish the program, as I was able to still find some good in it, but I couldn't with the programs' discriminatory practices. I don't like to give up on things or quit, and I didn't want to disappoint my family, but luckily, once I told them about what happened, they understood.

I was not the only person in the program that felt like I did. There was another woman who was there under court order and was forced to tell Teen Challenge staff members that she was straight in order to graduate. If she didn't lie, and told the staff that she was gay, she would not have been able to graduate and would have violated her court order and would have been sent to jail.

While I was discriminated against by North Dakota Teen Challenge residents and staff, the other horrible part about my story is that ND Teen Challenge has received state funding, and continues to receive state funding, as an active participant in the North Dakota Department of Corrections and Rehabilitation program, "Transition from Prison to Community Initiative."

In the past five years, ND Teen Challenge has received over \$1.3 million from the state of North Dakota, according to the organization's 990 forms.

It's sad to see state funding going towards a program where LGBT residents are forced to participate in, and be discriminated against, or go back to jail and not receive the transitional support the program is intended to offer.

It hurts to know that North Dakota, the state I have grown up in and love, allows discrimination to take place with state funding. Even worse, this discrimination takes place without anyone knowing about it. If discrimination is not a state value, then why would the state fund discriminatory programs and practices?

Please give Senate Bill 2279 a 'Do Pass' recommendation so that other young, hard-working North Dakota residents do not have to continue to experience the hurtful discriminatory practices taking place throughout our state.

Thank you.

Suzie Bartosh
Bismarck, ND

North Dakota Family Alliance Action

A Trusted Voice Impacting Our Legacy

House Human Services Committee

March 23, 2015

SB 2279

Tom D. Freier, EXECUTIVE DIRECTOR

#7 B

Mr. Chairman and members of the House Human Services Committee, I am Tom Freier with the North Dakota Family Alliance and am here testifying in opposition to SB 2279.

The North Dakota Century Code and Constitution currently provide for protection from discrimination and prejudice, reflecting an attitude of dignity and respect for all.

This bill adds the ambiguous concepts of 'sexual orientation and gender identity' as special protected categories to the code for the purpose of prohibiting discrimination. The definitions of sexual orientation and gender identity (SOGI) in this bill are subjective and vague. Unlike an immutable characteristic, like race, a characteristic which cannot change, "sexual orientation" defines conduct, behavior, or perception. The sexual orientation is self-identified as perceived by the individual, and may change. And in fact, if North Dakota were to pass SB 2279, we would be granting special legal protections to groups whose members are only required to self-identify to qualify.

Adding "sexual orientation and gender" to anti-discrimination code does more than protect an individual's rights or liberty, it creates a protected class, it grants special status. Granting special privileges, elevated status, and coercive power to some at the expense of freedom for all is not in the best interests of North Dakotans.

Supreme Court criteria for a change in non-discrimination status include: an immutable, unchangeable characteristic, being economically deprived, and suffering from political powerlessness. Sexual orientation seems to fit none of these requisite categories.

As a self-identified, perceived characteristic, that may in fact change, it certainly is not immutable. Studies indicate that homosexual incomes are equal to national averages. And when we take into consideration the election of Rep. Boschee and those sponsoring this bill, it would be difficult to say the effort has no voice in the public square.

Sections of this bill deal with employers and other business related regulations. North Dakota has a diverse, tolerant, and robust workforce environment. Everyone should be treated with dignity and respect in the workplace, both employers and employees. Today North Dakota embraces the freedom of all employers to hire individuals whom they believe are the best applicants for the job and the most likely to advance the mission of their business. Governor Dalrymple in his State of State highlighted the excellence of our states business environment—derived from both employers and employees.

Government should not through unfair employment mandates like SB 2279 diminish the rights of all. Governments role is to protect the freedom of all not threaten them. Businesses owners in North Dakota shouldn't have to choose between keeping their businesses open and conforming to government dictates. Across the country business owners, mostly small business

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owners have been subjected to long and expensive lawsuits in attempts to retain the ability to determine their employment options.

Section 9 of the bill refers to public accommodations. We believe the current environment serves North Dakota well—has and will continue to. Placing the almost impossible task of enforcing the provisions of Section 9 on the owners of public accommodations would be a tremendously heavy burden, and virtually impossible to enforce. It would require the owner (the school, business, mall, park, hotel) to ascertain an individual's self-identified, 'perceived' sexual orientation—to accommodate or risk litigation.

To put a face to the potential problems with this bill we need look no further than Minnesota. The Minnesota State High School League, equivalent to our North Dakota High School Activities Association, recently put in place a policy allowing transgendered athletes to compete in either the boys or girls program. We see the logistical enforcement issues relating to bathrooms and dressing rooms, and by enlarging our view to the entire accommodations section—we see the immense difficulty in enforcement and a system opening doors to unending litigation.

While Section 19 attempts to provide exemptions for religious organizations, we believe those provisions fall far short. The provisions of this bill go far beyond a church building or the pastoral staff. The First Amendment rights of men and women of faith do not cease as they leave the church building returning to their homes, businesses, and workplace. Case in point is the 68 year old Washington florist who served and employed people who identify as homosexual, and today is being sued in a lawsuit that may well cost her her business.

Before I complete my testimony and stand for questions, I want to introduce my guest, Kellie Fiedorek with Alliance Defending Freedom—to share information important to the committee as you deliberate SB 2279.

Section 19 will not protect people like Barronelle Stutzman.

Inside the walls of the church we see the ramifications of a measure like SB 2279 resulting in the loss of First Amendment rights. Recently the city of Houston subpoenaed sermon notes and emails of pastors who dared exercise their First Amendment rights regarding the city's sexual orientation ordinance. Thankfully, after a huge public outcry, the mayor withdrew the subpoenas. The religious exemptions in SB 2279 will not protect men and women of faith, inside the church walls or outside.

In summary, we believe that North Dakota thrives today as a result of being a diverse and tolerant people, embracing dignity and respect for all. The government should not provide special status, special privilege for some at the expense of freedom for all. The duty, the role of government is to protect the basic freedoms for all; this bill threatens those basic freedoms for all.

NDFFA respectfully asks for a Do Not Pass on SB 2279.

Kellie
Fiedorek

Testimony

#8



LEGAL MEMORANDUM

DATE: March 23, 2015
RE: Legal Analysis of Senate Bill 2279

Introduction

Enacting North Dakota Senate Bill 2279 (“SB 2279”)—the proposed legislation to expand North Dakota’s nondiscrimination laws to include the categories of “sexual orientation” and “gender identity”—will threaten North Dakotans’ First Amendment freedoms and expose the State to legal and fiscal liability.¹ Herein, we examine some of the legal concerns existent in SB 2279 should it be enacted:

- I. SB 2279 will violate constitutional rights by requiring North Dakotans to participate in events, or produce messages, with which they disagree.
 - II. SB 2279 threatens child-welfare providers, and those they serve.
 - III. SB 2279 will require schools, businesses, gyms, and other locations to make their restrooms, locker rooms, and shower rooms gender neutral. This will violate North Dakotans’ constitutional right to privacy and place these organizations and businesses at risk of lawsuits.
- I. SB 2279 will violate constitutional rights by requiring North Dakotans to participate in events, or produce messages, with which they disagree.**

Both the United States and North Dakota Constitutions protect freedom of expression from government coercion.² The constitutional right to free speech “includes both the right to speak freely and the right to refrain from speaking.”³ A long line of U.S. Supreme Court precedent establishes that the government cannot force citizens or organizations to convey messages that they deem objectionable; nor may it punish them for declining to convey such messages.⁴

¹ SB 2279 defines “sexual orientation” to include “gender identity”: “‘Sexual orientation’ means actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity.” SB 2279, § 14-02.4-02, 20, 64th Leg. Assem., Reg. Sess. (N.D. 2015). “Gender identity” is defined as “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.” SB 2279, § 14-02.4-02, 10, 64th Leg. Assem., Reg. Sess. (N.D. 2015).

² See U.S. CONST. amend. I; N.D. CONST. art. I, § 4.

³ *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

⁴ See, e.g., *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 572-73 (1995) (government may not require a public-accommodation parade organization to facilitate the message of a gay-advocacy group); *Pacific Gas*



But if SB 2279 is enacted, it will violate North Dakotans' constitutionally protected freedoms of speech and conscience by coercing individuals to participate in events or facilitate messages with which they disagree. This proposed legislation could also subject the State to lawsuits for which the State may be liable for attorneys' fees.

For example, the vast majority of businesses and organizations, including those owned by people of faith, prioritize treating all people with dignity and respect, including those who identify as gay, lesbian, or transgender. Indeed, research was unable to identify a substantiated, or even alleged, pattern and practice of sexual-orientation or gender-identity discrimination in North Dakota. But some business owners, because of their religious or moral beliefs, are unable to facilitate or participate in certain expressive events, such as same-sex ceremonies. Similarly, some business owners are unable to create messages that are contrary to what their faith commands. Because SB 2279 lacks protections for rights of conscience, the enactment of SB 2279 will allow the government to discriminate against good North Dakotan citizens who are simply trying to run their business consistent with their faith or mission. The adoption of SB 2279 thus will present these individuals and businesses with an intolerable choice: violate their conscience or face legal action, including fees, and possible termination of employment.⁵ Moreover, SB 2279 will stifle the diversity, choice, and freedom that are essential to flourishing communities and economic growth.

Legal action taken against business owners simply trying to live and work according to their conscience is not mere speculation. On the contrary, measures similar to SB 2279 enacted in other jurisdictions have resulted in government coercion and legal action taken against individuals and businesses that declined to express a message, or participate in, support, or host an event inconsistent with their deeply held religious beliefs. Some examples include:

- Barronelle Stutzman, the 70-year-old owner of Arlene's Flowers in Richland, Washington, has served and employed people, including those who identify as gay and lesbian, for her entire 40-year career. But in 2013, both the Washington State Attorney General and a same-sex couple sued Barronelle in her personal and business capacities pursuant to a law similar to SB 2279.⁶ These legal actions resulted when Barronelle referred one of the gentlemen, a long-time

and Elec. Co. v. Public Utils. Comm'n of Cal., 475 U.S. 1, 20-21 (1986) (plurality) (government may not require a business to include a third party's expression in its billing envelope); *Wooley*, 430 U.S. at 717 (government may not require citizens to display state motto on license plates); *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (government may not require a newspaper to include a third party's writings in its editorial page).

⁵ See N.D. CENT. CODE § 14-02.4-20. "If the department, as the result of an administrative hearing, or the court determines that the respondent has engaged in or is engaging in a discriminatory practice, the department or the court may enjoin the respondent from engaging in the unlawful practice and order temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date a minimally sufficient complaint was filed with the department or the court."

⁶ For more information about Barronelle Stutzman and Arlene's Flowers, including links to relevant legal documents, see the Alliance Defending Freedom media page, available at <http://www.alliancealert.org/tag/zz-state-of-washington-v-arlenes-flowers/> (last visited Jan. 31, 2015). The complaints against Barronelle are available at <http://www.adfmedia.org/files/ArlenesFlowersAGcomplaint.pdf> (last visited Jan. 31, 2015) and <http://www.adfmedia.org/files/ArlenesFlowersACLUcomplaint.pdf> (last visited Jan. 31, 2015). A short video featuring Barronelle telling her story is available at <http://www.youtube.com/watch?v=MDETkcCw63c> (last visited Jan. 31, 2015).



customer and friend, to a different florist because she could not create floral arrangements and provide full wedding support for his same-sex ceremony. Barronelle believes that marriage is a sacred relationship of a man and a woman, created by God. Even though Barronelle had provided this same-sex couple flowers for birthdays, anniversaries, Valentine’s Day, house warming parties, and many other events for nine years—and even though multiple other florists were eager to provide flowers for the couple’s wedding for free—both the state and the couple are seeking to compel Barronelle to either adopt their view of marriage and violate her faith or lose everything she owns.

- Donald and Evelyn Knapp are two ministers who own the Hitching Post Wedding Chapel. Late last year, pursuant to its local nondiscrimination law, the City of Coeur D’alene, Idaho tried to force the Knapps to perform a same-sex ceremony, even though doing so would violate their religious convictions.⁷ The City subsequently confirmed that it had not made a mistake: the wedding chapel was subject to the nondiscrimination ordinance similar to SB 2279.⁸ Alliance Defending Freedom attorneys have a filed a lawsuit on the Knapps’ behalf, challenging the constitutionality of the nondiscrimination law as applied to them.⁹
- In Lexington, Kentucky, an ordinance similar to SB 2279 is currently being used to prosecute Blaine Adamson, the owner of a printing company, Hands On Originals. Blaine has employees who identify as gay, and he has always served everyone regardless of sexual orientation. As is the case with most printing companies, Blaine must sometimes decline certain requests to print shirts because the messages he is asked to print violate his conscience. However, when he referred a request to print messages on shirts promoting a local “Gay Pride” festival because it would violate his religious convictions to print and convey a message promoting the event, the group hosting the festival filed a complaint against Hands On Originals, alleging sexual-orientation discrimination. And even though the representative of the festival found another printing shop that produced the requested shirts for free, Blaine’s case remains in litigation as the government seeks to coerce him to run his business according to its particular ideology, instead of protecting Blaine’s freedom to run his business according to his conscience.¹⁰
- A Georgia woman filed a discrimination complaint against a licensed counselor, who, because of her deeply held religious beliefs about same-sex relationships, respectfully declined to provide counseling about her same-sex relationship. The counselor referred the prospective client to a colleague, who, within minutes, provided the client with the help she sought. The counselor was nonetheless terminated from her employment.¹¹

⁷ Alliance Defending Freedom, “Govt tells Christian ministers: Perform same-sex weddings or face jail, fines,” October 18, 2014, *available at* <http://www.adfmedia.org/News/PRDetail/9364> (last visited Jan. 31, 2015).

⁸ Alliance Defending Freedom, “City of Coeur d’Alene confirms for-profit wedding chapel violates ordinance,” October 21, 2014, *available at* <http://www.adfmedia.org/News/PRDetail/9366> (last visited Jan. 31, 2015).

⁹ *Id.*

¹⁰ For more information about Blaine Adamson and Hands On Originals, including links to relevant legal documents, see *ADF: Ky. T-shirt company not required to promote message it disagrees with*, April 20, 2012, *available at* <http://www.adfmedia.org/News/PRDetail/5454> (last visited Jan. 21, 2015).

¹¹ *Walden v. Centers for Disease Control and Prevention*, Case No. 1:08-CV-2278-JEC-WEJ, Magistrate Judge’s Final Report and Recommendation, Doc. No. 111, at 16; 19-22; and 40-41 (N.D. Ga. Nov. 20, 2009).



These individual and businesses, and others like them—who cannot discard their religious beliefs at the door when they operate their businesses or carry out their professions—should not be forced to choose between their conscience and their livelihood. SB 2279’s failure to exhibit tolerance imperils the constitutionally-protected religious liberty of North Dakotans and needlessly drains North Dakota of business, revenue, tax dollars, and employment opportunities.¹²

II. SB 2279 threatens child-welfare providers, and those they serve.

Evidence from other jurisdictions that have passed measures similar to SB 2279 reveals that these laws lead to government discrimination against certain individuals and organizations engaged in the provision of child welfare services. There are frequent examples of government entities refusing to contract with individuals and organizations that conduct themselves in accordance with their religious beliefs because of the government entities’ adherence to nondiscrimination laws.

Unfortunate victims of this discrimination—in addition to the children, birth mothers, and adoptive families they serve—include the faith-based child-welfare agencies that, for religious reasons, strive to place children in homes with both a mother and a father. Indeed, statutes like the proposed law have forced charitable adoption organizations to close because they could not continue to adhere to their religious convictions.¹³ Regrettably, this type of unnecessary discrimination has already occurred in Illinois, Massachusetts, and the District of Columbia.¹⁴

¹² Michael W. McConnell, *The Problem of Singling Out Religion*, 50 DePaul L. Rev. 1, 43-44 (2000) (noting that legal issues involving sexual orientation “feature a seemingly irreconcilable clash between those who believe that homosexual conduct is immoral and those who believe that it is a natural and morally unobjectionable manifestation of human sexuality”).

¹³ See, e.g., Father Robert J. Carr, *Boston’s Catholic Charities to stop adoption service over same-sex law*, Catholic Online, available at http://www.catholic.org/printer_friendly.php?id=19017§ion=Cathcom (last visited Jan. 31, 2015) (“Catholic Charities in Boston announced March 10 that it is getting out of the adoption business.”).

¹⁴ See, e.g., Laurie Goodstein, *Illinois Catholic Charities close over adoption rule*, The Boston Globe, available at <http://www.bostonglobe.com/news/nation/2011/12/29/illinois-catholic-charities-close-rather-than-allow-same-sex-couples-adopt-children/Km9RBLkpKzABNLJbUGhvJM/story.html> (last visited Jan. 31, 2015) (“[M]ost of the Catholic Charities affiliates in Illinois are closing down rather than comply with a new requirement that says they can no longer receive state money if they turn away same-sex couples as potential foster care and adoptive parents.”); Father Robert J. Carr, *Boston’s Catholic Charities to stop adoption service over same-sex law*, Catholic Online, available at http://www.catholic.org/printer_friendly.php?id=19017§ion=Cathcom (last visited Jan. 31, 2015) (“Catholic Charities in Boston announced March 10 that it is getting out of the adoption business, over Massachusetts state law requiring that that the agency place children with same-sex couples.”); Julia Duin, *Catholics end D.C. foster-care program*, Washington Times, available at <http://www.washingtontimes.com/news/2010/feb/18/dc-gay-marriage-law-archdiocese-end-foster-care/> (last visited Jan. 31, 2015) (“The Archdiocese of Washington’s decision to drop its foster care program is the first casualty of the District of Columbia’s . . . same-sex marriage law.”).



III. SB 2279 will require public restrooms, locker rooms, and shower rooms to be gender neutral rather than gender specific.

Federal law governing throughout the country currently forbids discrimination on the basis of sex.¹⁵ Sex is determined by a person's biology and anatomy;¹⁶ it is an objectively verifiable characteristic that is familiar throughout the legal system. Indeed, traditional legal classifications of sex, as well as race and nationality, are innate, immutable characteristics that cannot be naturally changed. SB 2279, however, seeks to supplement the existing legal regime with the novel legal concept of "gender identity."

"Gender identity," unlike sex, is determined by a person's "perceived...identity, appearance, or mannerisms...regardless of the individual's designated gender at birth"; it is thus an internally conceived and objectively unverifiable characteristic with no firm legal foundation.¹⁷ Placing "gender identity" in the law, as the proposed bill attempts to do, creates an unworkable legal construct based on an individual's subjective perception.¹⁸ Simply put, it will radically change the law's—and, in turn, society's—view of maleness and femaleness by transforming a person's legal status as male or female based on a reality determined by biology to a status rooted in a preference determined by internal reflection. North Dakota's proposed addition of "gender identity" could create several issues for the state.¹⁹

First, the nondiscrimination statutes make it discriminatory for a person²⁰ "to fail to provide to a person access to the use of any benefit from the . . . facilities of the public accommodations."²¹ If SB 2279 is enacted, thereby adding "gender identity" to the list of protected characteristics under this section, businesses, schools, fitness centers are just some of the "public accommodations" that will be legally forced to allow biological males who identify as females to use the women's restrooms, locker rooms, and shower rooms; and likewise allow biological females who identify as males to use the

¹⁵ 42 U.S.C. § 2000e-2 ("It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex").

¹⁶ Shuvo Ghosh, *Sexuality, Gender Identity*, eMedicine, available at <http://emedicine.medscape.com/article/917990-overview> (last visited Jan. 31, 2015) ("Sex . . . is defined by the gonads, or potential gonads, either phenotypically or genotypically. It is generally assigned at birth by external genital appearance, due to the common assumption that this represents chromosomal or internal anatomic status.").

¹⁷ See § 14-02.4-02, 10, 64th Leg. Assem., Reg. Sess. (N.D. 2015). See also Shuvo Ghosh, *Sexuality, Gender Identity*, eMedicine, available at <http://emedicine.medscape.com/article/917990-overview> (last visited Jan. 31, 2015).

¹⁸ Taylor Flynn, *Transforming the Debate: Why We Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality*, 101 COLUM. L. REV. 392, 395-96 (2001) (noting that one goal of this recent push for the law to embrace the concept of gender identity is to "encourag[e] courts and society to conclude that the determination of one's sex should rest with the individual and not the state").

¹⁹ The bill defines "sexual orientation" to include "identity," so prohibiting discrimination based on "sexual orientation" also includes discrimination based on "gender identity." See § 14-02.4-02, 20, 64th Leg. Assem., Reg. Sess. (N.D. 2015).

²⁰ "Person" includes both natural born persons and corporate persons. See N.D. Code § 1-01-49.

²¹ N.D. Code § 14-02.4-16. A *public accommodation* is defined by the Code as "every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity." N.D. Code § 14-02.4-16. *Facilities*, while not defined, is generally understood to include restrooms, shower rooms, and locker rooms.



men's restrooms, shower rooms, and locker rooms. A business or school, for example, which attempts to protect the safety and privacy concerns of its employees or students by refusing to make these facilities gender neutral could face legal action for violating the law.

Second, allowing biological males into the restrooms, shower rooms, or locker rooms used by biological females may violate constitutional privacy rights. The Ninth Circuit Court of Appeals has noted that “[w]e cannot conceive of a more basic subject of privacy than the naked body. The desire to shield one’s unclothed figure from . . . strangers of the opposite sex[] is impelled by elementary self-respect and personal dignity.”²² The Tenth Circuit Court of Appeals has similarly explained that a person’s constitutional right to privacy is violated where a government policy or conduct allows a member of the opposite sex to view him or her while “engag[ing] in personal activities, such as undressing, using toilet facilities, or showering.”²³ Thus, SB 2279, if enacted, may violate the dignity and constitutional privacy interests of citizens who will be forced to share a restroom, shower room, or locker room with a person of the opposite biological sex. Indeed, this broad scope will impact most of the organizations throughout North Dakota. Consider the following examples of the potential impact of such a law:

- Organizations must allow persons to access sex-segregated programs, activities, and facilities in accordance with the sex they choose.²⁴ This means, for example, that a school must allow a biological male who professes a female identity to attend an all-girls school or participate in an all-girls class or athletic program.
- Organizations must allow persons to access bathrooms, showers, and locker-room facilities in accordance with the sex they choose.²⁵ Notably, it has not been sufficient in some jurisdictions for organizations to create a private “family” or “unisex” bathroom for use by such individuals. The Maine Human Rights Commission thus ruled that a middle school engaged in “gender identity” discrimination against a biologically male sixth-grade student who professed a female identity because the school provided the student with his own private bathroom and locker room instead of allowing him to use the female restroom.²⁶

²² *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963).

²³ *Cumbey v. Meachum*, 684 F.2d 712, 714 (10th Cir. 1982). See also *Lee v. Downs*, 641 F.2d 1117, 1119-20 (4th Cir. 1981) (noting that men are “entitled to judicial protection of their right of privacy denied by the presence of female[s] . . . in positions to observe the men while undressed or using toilets”).

²⁴ Maine Human Rights Commission, *Sexual Orientation in Schools and Colleges: Know Your Rights and Responsibilities*, available at http://www.foxnews.com/projects/pdf/2-08-2010_Draft_MHRC_Sexual_Orientation_Guidance.pdf (last visited Jan. 31, 2015) (“In general, students . . . must be allowed access to gender-segregated programs, activities, and facilities in accordance with their gender identity . . . , and they must be addressed by their chosen names and pronouns.”).

²⁵ Maine Human Rights Commission, *Sexual Orientation in Schools and Colleges: Know Your Rights and Responsibilities*, available at http://www.foxnews.com/projects/pdf/2-08-2010_Draft_MHRC_Sexual_Orientation_Guidance.pdf (last visited Jan. 31, 2015) (“[S]tudents must be allowed access to the bathrooms that correspond with their gender identity”).

²⁶ Heather Steeves, *Panel rules against Orono school in transgender bathroom access*, Bangor Daily News, Sept. 20, 2010, available at <http://www.bangordailynews.com/external/mobile/?id=154263> (last visited Jan. 31, 2015); *Human Rights Panel Rules Against Orono School in Transgender Bathroom Issue*, Maine Public Broadcasting Network, Sept. 21, 2010, available at <http://www.mpbnet.net/Home/tabid/36/ctl/ViewItem/mid/3478/ItemId/13583/Default.aspx> (last visited Jan. 31, 2015); *Panel: School Discriminated Against Transgender 6th Grader by Not Letting Student Use Girls' Room*, Fox News,



- Schools must allow students to participate in sex-segregated sports in accordance with the sex they choose.²⁷ This requires schools to allow, for instance, a biological female to play on the boy's football team, or a biological male to join the girls' basketball team.
- Employers, schools, and other organizations must allow employees, students, and patrons to dress in accordance with the sex they choose. This means that employers will no longer be allowed to maintain a reasonable dress code,²⁸ which they are currently able to do under federal law.²⁹ It also means that schools must allow biological males who profess a female identity to wear dresses, skirts, and earrings to class and other school functions.³⁰
- Publicly accessible organizations and entities that maintain separate lodging facilities for men and women—such as homeless shelters or drug-and-alcohol-rehabilitation centers—must allow persons to lodge with the residents who share the sex that they choose.³¹ This means that a women's homeless shelter, for example, must allow a biological male who professes a female identity to sleep in the women's facilities.

Third, laws allowing biological males to use facilities designated for women may be used by heterosexual sexual predators to gain easier access to women, teens, and girls. Sadly, this has happened in other communities that have enacted laws prohibiting discrimination on the basis of gender identity.³² Businesses will no longer be able to protect the dignity and safety of their female

Sept. 22, 2010, available at <http://www.foxnews.com/us/2010/09/22/panel-school-discriminated-transgender-th-grader-letting-student-use-girls-room/> (last visited Jan. 31, 2015).

²⁷ Maine Human Rights Commission, *Sexual Orientation in Schools and Colleges: Know Your Rights and Responsibilities*, available at http://www.foxnews.com/projects/pdf/2-08-2010_Draft_MHRC_Sexual_Orientation_Guidance.pdf (last visited Jan. 31, 2015) (“[S]tudents must be permitted to participate in gender-segregated sports in accordance with their gender identity”).

²⁸ *The Employment Non-Discrimination Act of 2007: Hearing on H.R. 2015 Hearing Before the Subcomm. on Health, Employment, Labor and Pensions, H. Comm. on Education and Labor*, 110th Cong. 38 (2007) (statement of Lawrence Z. Lorber, partner, Proskauer Rose, LLP, an attorney with more than 30 years of experience with labor and employment law), available at http://webgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:37637.pdf (last visited Jan. 31, 2015) (opposing a federal “gender identity” nondiscrimination law and noting that “[i]t is simply unclear how a reasonable dress code can coexist with the . . . indefinite classification of self-perceived gender identity”).

²⁹ *Jepperson v. Harrah's Operating Company, Inc.*, 444 F.3d 1104 (9th Cir. 2006) (en banc) (upholding a sex-specific dress code and grooming policy); *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385 (11th Cir. 1998) (similar); *Tavora v. New York Mercantile Exchange*, 101 F.3d 907 (2d Cir. 1996) (similar); *Carroll v. Talman Federal Savings & Loan Assoc.*, 604 F.2d 1028 (7th Cir. 1980) (similar); *Willingham v. Macon Telegraph Publ'g Co.*, 507 F.2d 1084 (5th Cir. 1975) (similar); *Dodge v. Giant Food, Inc.*, 488 F.2d 1333 (D.C. Cir. 1973) (similar); *Baker v. California Land Title Co.*, 507 F.2d 895 (9th Cir. 1974) (similar); *Knott v. Missouri Pacific Ry. Co.*, 527 F.2d 1249 (8th Cir. 1975) (similar); *Barker v. Taft Broad Co.*, 549 F.2d 400 (6th Cir. 1977) (similar); *Earwood v. Continental Southeastern Lines, Inc.*, 539 F.2d 1349 (4th Cir. 1976) (similar).

³⁰ Maine Human Rights Commission, *Sexual Orientation in Schools and Colleges: Know Your Rights and Responsibilities*, available at http://www.foxnews.com/projects/pdf/2-08-2010_Draft_MHRC_Sexual_Orientation_Guidance.pdf (last visited Jan. 31, 2015) (“[S]tudents must be permitted to dress in accordance with their gender identity”).

³¹ National Gay and Lesbian Task Force Policy Institute & National Coalition for the Homeless, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People* 31-33, 37-38 (2003), available at <http://www.thetaskforce.org/downloads/reports/reports/TransitioningOurShelters.pdf> (last visited Jan. 31, 2015) (noting that “[a] men's shelter is [not] . . . appropriate for a [biological male who professes a female identity]”).

³² See, e.g., Robert J. Lopez, *Man wore dress, wig to videotape women in bathroom, deputies say*, Los Angeles Times, May 14, 2013, available at <http://articles.latimes.com/2013/may/14/local/la-me-ln-man-videotape-women-in-restroom->



patrons by preventing these predators from entering the women's facilities. Instead, they will have to allow all biological males who assert that they identify as female access to rooms previously reserved for biological females. This jeopardizes the safety and privacy of women, teens, and young girls because it disregards the rights, interests, and dignity of the unsuspecting citizens who are exposed to the individuals that profess a sex contrary to their biological reality.

If SB 2279 is enacted, businesses, schools, and other public accommodations will be given the untenable choice of complying with the law or seeking to protect the safety, dignity, and privacy of their patrons. They will not be able to do both. This places these organizations in a no-win situation.

Conclusion

SB 2279 presents many constitutional and statutory concerns. The experiences of other jurisdictions demonstrate the legal challenges associated with such laws. If enacted in North Dakota, it will likely have many adverse consequences, including trampling every North Dakotan's fundamental freedoms.

20130514 (last visited Jan. 31, 2015); Sam Pazzano, *Predator who claimed to be transgender declared dangerous offender*, Toronto Sun, February 26, 2014, available at <http://www.torontosun.com/2014/02/26/predator-who-claimed-to-be-transgender-declared-dangerous-offender> (Jan. 31, 2015).

Testimony to the House Human Services Committee
By Clint Fleckenstein
on
Senate Bill 2279
March 23rd, 2015

#9 

Mr. Chairman and members of the Committee:

I am Clint Fleckenstein. I represent myself as a North Dakota citizen, a Christian, and photographer / videographer. I'm testifying in opposition to SB2279 for one simple reason: it has no protection for North Dakota citizens who are persons of faith.

Proponents of this bill are presenting it as a means of defending themselves against an implied sinister behemoth who's rampantly discriminating against people who choose a certain sexual behavior. They claim it's about employment opportunities or housing, but this legislation's greatest impact isn't related to those things at all.

Legislation worded exactly like SB2279 has an extensive and well-documented track record wherever it becomes law. It's used to force persons of faith (typically Christian, although it would apply to Muslims or other faiths) to cede their First Amendment rights to the free exercise of their religious faith as well as their freedom of association.

Here's how it typically works: a person or persons engage a small business person to perform a service related either the promotion of an alternate sexual lifestyle or services involving a homosexual "wedding" or other ceremony. If the person declines to provide this "public accommodation" due to their faith or religious beliefs, they have run afoul of the law. Then the following happens:

- The aggrieved persons entangle the small business in costly legal proceedings;
- They engage their allies to provide resources for this legalized bullying;
- They succeed in having them sent to "sensitivity training", presumably to "educate" them out of their faith; and/or
- They sue them out of business, and are now beginning to succeed in suing for the personal assets of the individual as well.

It's important to note that these targeted people are not declining to do business with the sexually disoriented; rather, they're simply declining to engage in certain behaviors or attend certain ceremonies. When a photographer, florist, or baker takes a wedding job, he or she becomes a participant in that ceremony. If they choose not to participate in a same-sex ceremony, they face the wrath of the sexual activists.

Article I, Section 6 of the North Dakota state constitution declares:

"Neither slavery nor involuntary servitude, unless for the punishment of crime, **shall ever be tolerated in this state.**" (emphasis is mine.)

Forcing a North Dakota citizen to participate in activity which conflicts with their faith or religion, which are protected by the United States and North Dakota constitutions, amounts to involuntary servitude.

How do the sexual activists plan to use this legislation? They have advocacy groups, public relations firms, legal foundations, financial resources, “human rights” commissions, and the ACLU pushing their agenda and ready to punish individual North Dakota citizens for disagreeing with them. The average North Dakota citizen doesn’t have the resources to defend themselves against such an army in courtrooms or commissions which are often sympathetic to their agenda. That is why proponents of SB2279 need you to give them this tool: to take us to their territory.

You may notice that this legislation narrowly passed the Senate despite a Do Not Pass recommendation from the Judiciary Committee. If I had to surmise why this happened, I’d point out the following: the body of the Senate heard none of what I just told you. They heard that the proponents of the bill couldn’t provide any evidence of actual discrimination, but they have not heard the whole truth about what North Dakota citizens will face in the wake of this bill should it become law.

- The Senate wasn’t told about Jack Phillips, a baker who was forced by these activists to undergo “sensitivity training” and file quarterly compliance reports with the state of Colorado for himself and his employees.
- The Senate wasn’t told about great-grandmother Arlene Stutzman, a florist who is being forced to close her business and who faces losing her home and personal assets. She’s in this position because she declined to participate in the homosexual “wedding” ceremony of a long-time customer. Arlene, by the way, employed workers who identified themselves as homosexual.
- The Senate wasn’t told about the school district in Orono, Maine which was caught between two options: face a \$75,000 fine for not allowing a boy in the girls’ bathroom because his “perceived gender identity” is that of a girl, or face traumatized students and infuriated parents. After a costly legal battle they got the fine and were forced to accommodate the boy as well.
- The Senate wasn’t told of the teenage girls who spotted a man in their swimming pool locker room, seeing his male genitalia under his towel in the sauna, who were informed that the man could not be removed because he “identifies” as a woman.
- The Senate wasn’t told of the heterosexual man in Canada who used law like SB2279 to gain access to a women’s facility due to his identifying as “transgender”, where he committed multiple sex crimes against women residing there.

Regardless of one’s views on the alternate sexual behaviors listed in the bill, it should be clear that on a simply mechanical basis SB2279 is bad law. That’s why its proponents have to talk in emotional terms such as “who you love”, “equality”, or “human rights” while labeling those who don’t think like them as “haters” or “homophobes”. I assure you, there’s no “love” or “equality” in this bill, nor will there be in its aftermath if it becomes law. This bill must be voted upon based on its consequences, not emotion, buzzwords, or anecdotes.

I urge you not only to recommend a Do Not Pass on SB2279, but also to present this information to the body of the House during floor debate before this activists’ dream comes to a vote.

Thank you for your time and consideration of my testimony.

Clint Fleckenstein



Steven F. Hayward Contributor

Opinions expressed by Forbes Contributors are their own.

SB2279
3-23-15

OPINION 6/30/2014 @ 11:16AM 3,569 views

Persecution And The Art Of Baking, Or How Civil Rights Became Corrupt

Comment Now

Deep inside today's Supreme Court opinion in the long-awaited *Hobby Lobby* case that involves the conflict between religious freedom and Obamacare's contraception mandate is the caveat that religious freedom cannot be invoked as a shield behind which to engage in illegal discrimination. Which means that the decision, while a minor nick to Obamacare, provides little or no future guidance to the increasingly harsh clash of individual rights that is now rending the nation asunder.

This conflict can be seen especially in the case of Jack Phillips and his Masterpiece Cakeshop in Lakewood, Colorado, and its current disposition should be sobering to all friends of a free society, not to mention a genuinely *tolerant* one. The conflicts between religious liberty, freedom of association, and equality that have existed in a state of simmering ambiguity for more than a century may have finally reached a breaking point.

In 2012 Phillips declined to make a custom wedding cake for a gay couple, Charlie Craig and David Mullins, because of his religious views against same-sex marriage, though, it should be noted, he did not refuse to provide any other baked goods for the couple's ceremony. Further, gay marriage was not yet legal in Colorado at that point. (Craig and Mullins were planning a Colorado celebration of their marriage in Massachusetts.)

Craig and Mullins brought a discrimination complaint against Phillips with the Colorado Civil Rights Commission, and the ACLU and Colorado's attorney general piled on the bandwagon. An administrative law judge sided with Craig and Mullins against Phillips, and in late May the Colorado Civil

Rights Commission further ordered that Phillips and his employees be sent to re-education camp—make that “sensitivity training”—to make sure Masterpiece Cakeshop never violates gay rights again.

This case appears to be another in a long line of contrived cases (there's a very similar case unfolding in the same way in Oregon, along with the New Mexico case involving a photographer who refused to shoot a gay wedding ceremony), stretching back at least to *Plessy v. Ferguson* in 1897, intended to expand the reach of civil rights law. How did Craig and Mullins come to select *this* particular Colorado bakery for a wedding cake, and are there not other bakeries that would gladly supply them with a wedding cake? It is not as though the baking trade is a narrow, uncompetitive oligopoly or a government-sanctioned monopoly like public transportation. Why would you want to buy a cake (or any custom product) from someone who doesn't want to make it for you? I wonder how Craig and Phillips might fare if they'd requested a wedding cake from a Muslim-owned bakery, or whether the Colorado Civil Rights Commission would have required Muslims to attend “sensitivity training” re-education camps. Today's multicultural orthodoxy suggests the obvious answer.

Beyond the facts of this particular legal case, or alternate market-oriented remedies such as an organized boycott of Masterpiece Bakeshop or rival gay-friendly bakeries who see a business opportunity, there is the fundamental clash of basic American liberties that we have papered over for a long time. On the one hand, the First Amendment guarantees religious liberty *and* freedom of association, the latter implying a right *not* to associate with someone if you don't wish to. Likewise, the idea of private property implies among its traits the right to exclude people or uses from your property. On the other hand, we have the 14th Amendment's mandate for the “equal protection of the law,” along with the general principles of American politics about equality and equal individual rights.

The legacy of slavery and race-based discrimination has led us to make compromises that limit the scope of some fundamental freedoms. The Supreme Court ruled way back during Reconstruction that property ceases to be wholly private when it is used in certain kinds of commerce, especially public conveyances such as transportation, hotels, and restaurants—though restaurants are still allowed to discriminate against the shirtless, the shoeless, and the smelly, showing that we haven't lost our ability to make any rational discriminations about “discrimination.”

4

The historical injustice of slavery and its successor, Jim Crow segregation under the Democratic Party, provides a powerful contingent rationale for blurring the pure straight lines of individual liberty, freedom of association, and robust property rights, though the fact that we have justified most of our modern civil rights laws as regulations of commerce under the Commerce Clause, rather than under a categorical moral condemnation of racial classification, should alert us to the defects and contradictions of our social-legal regime. The apotheosis of this halfway house of moral-political reasoning was the Civil Rights Act of 1964 and the Supreme Court cases that validated it as commercial regulation rather than a postulate of moral principle, though the legal language has always been tangled and confusing. The point is, we have been willing to tolerate some degree of government coercion of private behavior to remediate the original state-sanctioned coercion of slavery and its aftermath. But this tenuous compromise of principle has led to the gradual corruption of civil rights.

Today “discrimination” has been steadily expanded by every other claimant or group with a grievance. Every possible social asymmetry is claimed to be a fundamental “civil rights” issue, requiring similar extensions of government coercion. A few simple hypotheticals show the irresolvable legal and political thicket we are creating. What if Mr. Phillips agreed to bake the cake for the gay couple, but insisted on including a statement, made out in frosting, about his religious objection to homosexuality? Wouldn't prohibiting him from doing so infringe his right to free expression? Would a Jewish or African-American bake shop be required to supply a cake to a White supremacist group? Actually, a KKK chapter in Georgia won a complaint against a bakery last year. (**Correction:** This story appears to be an *Onion*-like hoax, though it was widely picked up and spread elsewhere by other news sites. Like all good satire, who doubts that it could come to pass?)

Jack Phillips has responded to the state sanctions against his religious belief by deciding to discontinue making wedding cakes for *any* customer. Is this the kind of outcome Rosa Parks and Martin Luther King Jr. had in mind?

SB 2279

3-23-15



Great-Grandma Florist Could Lose Livelihood for Saying No to This Wedding

Kelsey Harkness / December 28, 2014

A florist in Washington state is being sued for adhering to her Christian beliefs in declining to make flower arrangements for one couple's wedding.

Before the lawsuit, Barronelle Stutzman, owner of Arlene's Flowers in Richland, Wash., had employed workers who identify as homosexual and sold floral arrangements to gay and lesbian customers.

One such customer turned out to be one of the men who would sue her for not being willing to be hired for their same-sex wedding.

Unlike businesses that face similar lawsuits for refusing to provide specific wedding-related services to gay and lesbian couples on religious grounds—among them bakers in Oregon and farmers in New York—Stutzman is being sued in both a professional and personal capacity.

That means she could lose everything she owns.

Here's the Backstory

Barronelle Stutzman is a great-grandmother who has been in the floral industry for more than 40 years.

When Washington state legalized same-sex marriage in 2012, she decided that as a matter of conscience she could not participate in or further same-sex ceremonies by using her creative skills in connection with them.

So when two men, Robert Ingersoll and Curt Freed, asked her to design flower arrangements for their wedding, Stutzman politely declined and referred them to other vendors in the area. Ingersoll had been a valued customer, she says, so it was difficult.

6

The state's attorney general said Stutzman's decision to stand by her Christian faith was in direct conflict with a state law ensuring freedom from discrimination.

The measure prohibits places of public accommodation—which officials say include Arlene's Flowers—from discriminating on grounds of race, creed, sexual orientation, physical disability and so forth.

In April 2013, two months after Washington redefined marriage to include same-sex couples, state Attorney General Bob Ferguson filed a lawsuit against Arlene's Flowers and its owner. (The change to state law subsequently was challenged and didn't become official until Dec. 6.)

At the time, the gay couple seeking the flower arrangements had not yet filed a formal complaint against Stutzman's business.

Stutzman is represented by Kristen Waggoner, a lawyer at Alliance Defending Freedom, an organization dedicated to defending religious liberty.

But a few days later, the American Civil Liberties Union of Washington filed a civil suit against Stutzman on behalf of Ingersoll and Freed.

The suits, since consolidated into *Arlene's Flowers v. Ferguson*, were filed in Washington's Benton County Superior Court.

SB 2279
3-23-15



(Photo: Alliance Defending Freedom)

Waggoner says it is unprecedented for the Washington attorney general's office to sue a family business owner in a personal capacity unless that owner has committed acts of fraud or misrepresentation.

"They're trying to set an example of her and punish her," says Waggoner, noting the suit has the potential to cripple Stutzman's livelihood. "She's not wealthy, so common sense would tell you that it's going to hurt pretty bad."

8

Ruling: Owner of Arlene's Flowers Can Be Personally Liable

SB2279
3-23-15

January 8, 2015 / 39 Comments / by Joseph Backholm

Yesterday, Benton County Superior Court Judge Alex Eckstrom ruled that Barronelle Stutzman, owner of Arlene's Flowers, can be held personally liable in lawsuits that resulted from Arlene's Flowers decision not to decorate for a same-sex ceremony.

Attorney General Bob Ferguson filed the first lawsuit against the Richland grandmother but a second lawsuit was later filed by the ACLU on behalf of the customers. The lawsuits were brought not only against Arlene's Flowers but also against Barronelle Stutzman personally.

Lawyers for Mrs. Stutzman had argued that it was inappropriate to sue her personally because it was a decision made in the operation of her business, but Judge Eckstrom disagreed.

As a result of this decision, the government can go after both the business assets of Arlene's Flowers and personal assets of Barronelle Stutzman to collect attorney's fees should their lawsuits prevail.

Responding to the ruling, Kristen Waggoner, an Alliance Defending Freedom Attorney for Barronelle Stutzman and Arlene's Flowers said, "In America, the government is supposed to protect freedom, not intimidate citizens into speaking and acting contrary to their faith under threat of severe punishment. The government is sending a clear message to Barronelle and the people of Washington: dare to disagree with the government, and you put your home, your family business, and your life savings at risk."

Judge Eckstrom is expected to rule on a summary judgment motion in the next week.

Trial is currently scheduled for March 23rd.

The narrow question of personal liability in a specific lawsuit is not itself a conspiracy against conscience rights and religious freedom.

However, there is little doubt that the government's ability to go after the personal assets of business owners who prefer not to be part of certain events will continue to chill the free

exercise of religion that until recently was celebrated and protected in America.

Whatever the outcome of this specific case, the real solution is a state legislature that respects a marketplace of ideas that makes room for people of different backgrounds, faiths, and perspectives.

But the legislature won't act unless the public insists on it.

If you are concerned that the government is suing grandmothers because of their beliefs about marriage and sexuality, please contact your state legislators and ask them to support protections for conscience rights and religious freedom. Then encourage your friends and family to do the same.

Every American is guaranteed the freedom to live and work faithfully.

The Washington State Attorney General is working hard to change that.

Don't let him win.

Tags: Alliance Defending Freedom, Arlene's Flowers, conscience



AP

ASSOCIATED PRESS

Dec 2, 6:26 PM EST

SB2279
3-23-15

DISTRICT ORDERED TO PAY TRANSGENDER STUDENT \$75K

ORONO, Maine (AP) -- A Maine court has awarded the family of a transgender girl \$75,000 in a settlement of her discrimination lawsuit against a school district where administrators made her use a staff, not student, bathroom.



AP Photo/Robert F. Bukaty

Nicole Maines won her lawsuit against the Orono school district in January before the Maine Supreme Judicial Court, which ruled that the school district violated the Maine Human Rights Act. It was the first time a state high court in the U.S. concluded that a transgender person should use the bathroom of the gender with which they identify.

A lower court awarded her the financial settlement last week. It will go to the Maines family, the Boston-based Gay & Lesbian Advocates & Defenders, and Berman Simmons, a Portland law firm that represented Maines, said GLAD spokeswoman Carisa Cunningham.

The Penobscot County Superior order, dated Nov. 25, represents the conclusion of the court case that began in 2009 when the Maines family and the Maine Human Rights Commission sued the school district. The order prohibits the district from "refusing access by transgender students to school restrooms that are consistent with their gender identity."

School administrators across the country are grappling with the issue.

Nicole, now 17, is a biological male who identified as a girl beginning at age 2.

Nicole was using the girls' bathroom in her elementary school until the grandfather of a fifth-grade boy complained to administrators. The Orono school district determined that she should use a staff bathroom, but her parents said that amounted to discrimination.

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EVERGREEN STATE COLLEGE POLICE SERVICES

2700 EVERGREEN PKWY NW OLYMPIA, WA 98505

SB1279
3-23-15

Case #: 12-1460

Incident Type(s) SUSPICIOUS CIRCUMSTANCES Disposition: REPORT ONLY - INFORMATION		Disposition REPORT ONLY - INFORMATION	
INDECENT EXPOSURE Disposition: REPORT ONLY - INFORMATION			
Reporting Person S8079 CHIEF ED SORGER	Incident Date & Time 9/26/2012 1712 to 9/26/2012 1729	Called In/Discovered 9/27/2012 1150	
Physical Location: CRC	Patrol Area/Beat/Sector: CRC-2745 MCCANN PLAZA NW		
Building: CRC	Specific Location: WOMEN'S SAUNA/LOCKER ROOM		
Manager/Supervisor on Duty	Manager/Sup. Notified NO	Use of Force	

Synopsis/Overview

CONTACT # 1 (INVOLVED)									
Name FRANCIS/COLLEEN/B		Name Type INVOLVED		Phone #		Work #			
Address		Birthdate	Age	Sex	Race	Height	Weight	Hair	Eyes
City, State, Zip/Postal Code		EMAIL	45	F	W				
						Trespasser	Use Caution		
						NO	NO		
D.L. Number	DL State	Exp. Year	SS Number	FBI Number	SID Number	Internal Number A00144460			
Notes									
CONTACT # 2 (REPORTING PERSON)									
Name		Name Type		Phone #		Work #			
Address		REPORTING PERSON							
City, State, Zip/Postal Code		Birthdate	Age	Sex	Race	Height	Weight	Hair	Eyes
		EMAIL							
						Trespasser	Use Caution		
						NO	NO		
Notes									

Prepared By: CHIEF ED SORGER	Report Date and Time 9/28/2012 at 10:03:45	Signature	Reviewed By / Date CHIEF ED SORGER 9/28/2012
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CONTACT # 3 (WITNESS)

Name	Name Type	Phone #	Work #
MALLOY/LACY/J	WITNESS	[REDACTED]	[REDACTED]
Address	Birthdate	Age	Sex
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
City, State, Zip/Postal Code	EMAIL	Trespasser	Use Caution
[REDACTED]	[REDACTED]	NO	NO
D.L. Number	DL State	Exp. Year	SS Number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	FBI Number	SID Number	Internal Number
	[REDACTED]	[REDACTED]	A00219156

Notes

CONTACT # 4 (WITNESS)

Name	Name Type	Phone #	Work #
TROTTER/JOSHUA	WITNESS	[REDACTED]	[REDACTED]
Address	Birthdate	Age	Sex
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
City, State, Zip/Postal Code	EMAIL	Trespasser	Use Caution
[REDACTED]	[REDACTED]	NO	NO
D.L. Number	DL State	Exp. Year	SS Number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	FBI Number	SID Number	Internal Number
	[REDACTED]	[REDACTED]	ESC ASST. COAC

Notes

CONTACT # 5 (WITNESS)

Name	Name Type	Phone #	Work #
[REDACTED]	WITNESS	[REDACTED]	[REDACTED]
Address	Birthdate	Age	Sex
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
City, State, Zip/Postal Code	EMAIL	Trespasser	Use Caution
[REDACTED]	[REDACTED]	NO	NO

Notes

CONTACT # 6 (WITNESS)

Name	Name Type	Phone #	Work #
WRIGHT/ TIFFANY	WITNESS	[REDACTED]	[REDACTED]
Address	Birthdate	Age	Sex
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
City, State, Zip/Postal Code	EMAIL	Trespasser	Use Caution
[REDACTED]	[REDACTED]	NO	NO

Notes

Incident Narrative

On Thursday, September 27th at 11:50 am I was contacted in person by [REDACTED], who is [REDACTED] here at the Evergreen State College and mother of [REDACTED], who is a 17 year old student in the swim club at Capital High School. She reported her daughter was upset because she observed a person at the women's locker room naked and displaying male genitalia. [REDACTED] felt her daughter shouldn't have been victim to

Prepared By: CHIEF ED SORGER	Report Date and Time 9/28/2012 at 10:03:45	Signature [REDACTED]	Reviewed By / Date CHIEF ED SORGER 9/28/2012
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14

this type of situation and wanted something done about it. I advised her I would be following up on her complaint and asked her to have her daughter forward a statement in reference to what she observed.

NOTE: The day prior on Wednesday, September 26th at 1712 hours, Officers Brewster and Koppenhaver responded to the Campus Recreation Center (CRC) on a report of a man in the women's locker room. The person who called Police Services was a Joshua Trotter (coach with the Evergreen Swim Club - not affiliated with Evergreen College.) When the officers arrived they were advised the individual in question was trans-gender and the CRC was handling the situation and misunderstanding. Apparently Colleen Francis's (trans-gender person) friend Lacy Malloy had a conversation with someone at the CRC and was upset with Colleen's identity being questioned. It's unknown at the time of this report who the conversation was with.

Tiffany Wright, who is a swim coach for Evergreen Swim Club (no affiliation to Evergreen College), called me on Friday, September 28th to advise she was the one who confronted Colleen in the sauna. Because while she was at the pool, a female high school swim student came up to her and stated there was a man in the sauna. The lifeguard (Justin) requested Tiffany to go to the sauna and check it out and she did at which time she observed Colleen sitting with her legs open with her male genitalia showing and Tiffany said to her, "you need to leave." Tiffany then went to the front desk and asked the person there to call police. She subsequently forwarded an email statement to me, which is attached to this report. In this email she states she apologized to Colleen for questioning her but she also explained there were girls 6 to 18 years of age and they were not use to seeing individuals in situations like this.

I contacted Joe Wheeler at the Thurston County Prosecutor's Office and advised him of the situation and asked him if we had enough information for a possible indecent exposure or any other charges based on the complaint from the [REDACTED] and he advised he would get back to me shortly. I then received a call back and Joe advised he met with other colleagues to confer and he stated the criminal law is very vague in this area and it would be unlikely they could pursue charges. I then advised [REDACTED] of this information and also explained to her the college is taking this seriously and looking into some avenues to minimize this type of thing from occurring in the future.

Prepared By:	Report Date and Time	Signature	Reviewed By / Date
CHIEF ED SORGER	9/28/2012 at 10:03:45		CHIEF ED SORGER 9/28/2012

SB2279

3-23-15



HOMOSEXUALITY Tue Mar 4, 2014 - 4:57 pm EST

Sexual predator jailed after claiming to be 'transgender' in order to assault women in shelter

Peter Baklinski

TORONTO, March 4, 2014 (LifeSiteNews.com) – A biological man claiming to be 'transgender' so as to gain access to and prey on women at two Toronto shelters was jailed "indefinitely" last week after being declared by a judge a "dangerous offender."

Pro-family leaders are pointing out that this is exactly the type of incident they warned of as the Ontario government passed its "gender identity" bill, dubbed the "bathroom bill," in 2012.

Christopher Hambrook, 37, leaned on the ever expanding legal "rights" offered to people who "identify" with the sex opposite their biology. Under the name "Jessica," he was able to get into the women's shelters, where he sexually assaulted several women in 2012, the *Toronto Sun* reports.

Court heard how one woman awoke to find Hambrook assaulting her on her bed. "Her tights had been pulled down past her bottom and her bathing suit had been pulled to the side," court documents reveal. "She yelled at the accused, demanding to know what he was doing. He simply covered his face with his hands, said 'Oops!' and started giggling."

Court also heard evidence of Hambrook terrorizing a deaf woman living in the shelter. "The accused grabbed the complainant's hand and forcibly placed it on his crotch area while his penis was erect," court heard.

The same deaf women reported that Hambrook would peer at her through a gap between the door and its frame while she showered.

Justice John McMahon imposed the "indefinite" prison sentence due to Hambrook's long history of committing sex crimes.

Hambrook was a former stripper and escort from Quebec before moving to Toronto in 2009 and posing as a woman. While in Montreal he served four years in jail for a 2002 sexual assault of a five-year-old girl who was a family friend and for raping a mentally challenged 27-year-old woman while on bail for the first crime, reports the *Toronto Sun*.

The prosecution successfully convinced the judge that Hambrook's out-of-control sexual urges put the public at great risk and that an indefinite jail sentence was the only way to protect the public.

10

"I am satisfied there is no reasonable expectation that a lesser measure would adequately protect the public from Christopher Hambrook," said Judge McMahon.

Ontario amended its Human Rights Code to make "gender identity" and "gender expression" prohibited grounds for discrimination in 2012. The bill's sponsors said at the time that the so-called "Toby's Law" would open the door to "social change" in Canada.

Click "like" if you want to defend true marriage.

Family advocates argued at the time that the NDP sponsored bill would create a legal right for a man who calls himself 'transgender' to use rooms and facilities intended for women so as to exploit women.

The bill was subsequently dubbed the "bathroom bill" by its critics. Allowing a man who calls himself 'transgender' to enter a woman's area has already proved problematic in the United States.

In 2012 a college in Washington state decided it would not prevent a 45-year-old man who presents himself as a transgender "female" from lounging naked in a women's locker room in an area frequented by girls as young as six. Teenage girls on a high school swim team were using the facilities when they saw "Colleen" Francis deliberately exposing male genitalia through the glass window in a sauna. Police told one outraged mother that the university could not bar the biological male from the premises.

Brian Rushfeldt, president of Canada Family Action, told LifeSiteNews that Hambrook's method of gaining legal entrance into the woman's shelters proves gender identity legislation is inherently flawed.

"The Ontario law is dangerous. It is unacceptable that any country would allow a law which puts citizens at risk. It proves the law was ill planned and executed, and the government should be held legally responsible for these crimes."

Jack Fonseca of Campaign Life Coalition told LifeSiteNews that it "didn't take a brain surgeon to predict that letting men into women's bathrooms and other private spaces would eventually lead to sexual assaults."

"I wish we didn't have to say 'I told you so,' but Ontario's party leaders and MPPs were warned that the transsexual 'Bathroom Bill' endangered women and needed to be defeated."

"Of course this lunatic law could only make it easier for rapists and peeping toms to prey on female victims while masquerading as 'transgendered.'"

Fonseca called for a repeal of the law.

"If this dangerous law is not repealed, we will only see a rise in male predators attacking women in spaces where they deserve the right to privacy like bathrooms, change rooms and women's shelters."

Fonseca took aim at Progressive Conservative leader Tim Hudak for supporting the bill, saying that he should take “personal responsibility for the attempted rape of those poor women in the shelters.”

“Hudak cannot escape blame: He supported this nonsensical law.”

QMI Agency's Christina Blizzard wrote in an opinion piece last week that women have a “right to protection.”

“This is a bad law that allows heterosexual predators access to women in their most personal moments. Extra care should be taken to protect at-risk women in vulnerable situations, such as homeless shelters.”

Ezra Levant said that the gender identity law in Ontario has made the province become a “magnet for rapists.”

“Instead of women being protected in Ontario, instead of the law protecting women, the law serves up women to a rapist named ‘Jessica,’” he said on his show *The Source*.

A federal version of the “gender identity” bill currently sits in the Senate after failing to pass its third and final reading in August after the Conservatives shut down Parliament for a summer break.

Fonseca said that the federal legislation puts Canadian women at risk.

“We urge all concerned Canadians to phone, email and write Canada’s Senators pointing out that the Ontario version of this law allowed Mr. Hambrook to sexually assault two women, and to ensure that Senators do not make the mistake of granting legal cover to would-be rapists at the federal level.”

“Tell the Senators to vote NO to Bill C-279 when it comes up again.”

Contact Canada's senators here.

#10 B

Testimony from Alison Grotberg
RE: SB 2279
3/23/15
House Human Services Committee

Chairman Weisz and committee members,

Should the Law Protect Human Conscience or Punish It?

It has been said that this bill, SB 2279 is only about discrimination in housing and employment and that it has nothing to do with religion. The truth is **this bill asks you as legislators to make a law that violates the free exercise of orthodox Christianity** (and other religions). By "orthodox," I mean the original, historical teachings of the Christian church consistent with biblical revelation and the creeds carried on for centuries by both the Catholic and Protestant expressions of Christianity.

The First Amendment in the U.S. Constitution says: "**Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.**"

Orthodox Christians believe that God, as the Creator of all things, makes certain claims on their lives. They seek to faithfully align their decisions and actions according to the revelation of God from the Bible and church teaching. If Bob, an orthodox Christian, is asked to make a t-shirt for a strip club and one to promote gay pride, both situations create a moral dilemma. One is asking Bob to promote the exploitation of women by inspiring lust through the objectification of the female body, and the other asks Bob to promote pride in a lifestyle that experiences human sexuality in a way that goes against God's design for sexuality as laid out in the Bible and taught in orthodox Christian churches. Because of this, Bob sends both customers to another t-shirt shop for the same reason. **It is not because of who they are as individuals; it is because of the message they seek to promote.** In other words, if these same customers came in wanting to promote their cheese-making business or lawn care company, Bob would have no problem.

Orthodox Christians don't desire to inflict pain on anybody. They are saved from their sin by God's grace through Jesus and they feel compassion for those who are hurting. **This bill is problematic for them, however, because it forces them to do things that violate their conscience and the religious protections in this bill are so narrow as to be meaningless in application to the individual believer.** When Christians object they are called haters, bigots, homophobes. Their fidelity to God is labeled "discrimination." Just because orthodox Christians don't want their beliefs silenced doesn't mean they are haters, bigots, homophobes. **Has anyone considered that their love for their fellow human beings just looks different than the way somebody else wants them to express it?**

Does that sound familiar?

Discriminating against one group in pursuit of relieving discrimination for another group is completely devoid of wisdom and will only create societal discord as it has in other states. That is why this bill is the wrong tool for North Dakota. This bill demands that the state grow in sympathy and advocacy for those who have gender identity and sexual orientation concerns, while at the same time stripping tens of thousands of people of their constitutional right to follow their conscience under God without legal

repercussion. This lack of toleration for others is exactly what proponents say they want to erase in the name of equality. It is their refusal to acknowledge the very real burden and pain they are placing on orthodox Christians (and other people of faith) that makes their plea for "equality" so disingenuous. Legislators, please ask yourself, does this bill increase toleration for all or does it just tip the balance in the opposite direction?

There is much social science data on the value, stability, and well-being religious people bring to society. Does the state of North Dakota really want to punish them for following the tenets of their faith? With this bill, you will be forcing orthodox Christians to make a choice:

- **Accept revelation from God, act accordingly, face being fined, jailed, and/or go out of business — in other words, punished for one's conscience under God.**
- **OR accept the dictates other human beings make to harness conscience, suppress belief, and through the force of law suffer under the weight of a compromised heart.**

Chairman Weisz and committee members, I am asking you to see that **both of these options create consequences for the tens of thousands of orthodox Christians in the state of North Dakota that are utterly unacceptable in a free country.**

Thomas Jefferson agrees. In a letter to the Society of the Methodist Episcopal Church he asserts that "[n]o provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority." He says it best, informed by an age when conscience rights were very new, unique in the history of humankind, and hard-won. Let's not forget our unparalleled heritage in the exercise of freedom of conscience.

Chairman and committee members, should the law protect human conscience or punish it? **Give SB 2279 a 'do not pass' recommendation and please vote against it on the floor, educating and encouraging your colleagues to do the same. Protect freedom of conscience in North Dakota.**

Thank you for your time and consideration of my concerns.



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 2279
Date: March 23, 2015

#11

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 the person's sexual attraction. Moreover, all human persons, including those with homosexual inclinations, have a right to obtain employment and housing.

But this legislation is not about how we feel about discrimination based on sexual orientation. It is not about whether a nondiscrimination policy is good for business. It is not about whether we should be like other states. It is about *this* bill.

This bill gives individuals a right to sue - and some would say harass - based on a set of undefined or poorly defined phrases. Moreover, the only thing clear about the definitions is that, unlike race, sex, and age, they encompass chosen activities, including sexual activities outside of marriage. Civil rights categories should not be used to cover a particular group's sexual activities. Current law already protects lawful activities outside the place of employment. This bill, however, would create special protections for a certain class of activities - not persons.¹

This bill is also replete with infringements upon conscience, religious liberty, and the right to engage in commerce and social service without sacrificing sincerely-held beliefs. The bill has a religious "exemption," but that exemption actually provides less protection than federal law. More troubling, the bill's exemptions do not exempt religious entities or anyone from the bill's *sexual orientation* provisions.

We realize this is an emotionally-charged issue. However, respect and cooperation, among people with legitimate differences of opinion is what makes North Dakota great. There is no place for hate, name-calling, or stereotyping by people on either side of this issue or this particular bill. Keeping those principles in mind we urge this committee to carefully review what this bill actually does and give it a **Do Not Pass** recommendation.

¹ Here lies the fundamental error of any "sexual orientation" legislation. Unlike something like race or sex that does require overt behavior, the sexual orientation of an individual is not known unless the individual publicly expresses his or her sexual orientation with overt speech or actions.

Handed in 3-23-15
SB 2279

#12 ♡

GRAND FORKS -- Under current North Dakota law, it is completely legal to fire or evict a fellow North Dakotan based on the fact that he or she is gay or transgender. To me, as the co-owner of a business, an active member of my community and a husband and father, that lack of common-sense protection under the law is simply wrong. And passing SB 2279 in the North Dakota Legislature would correct it.

My business partners and I have worked hard to create a safe, fair and inclusive employment environment for our team. But we are charged with more than that objective. It is our duty to create the best business climate for our communities and for our state that we possibly can.

And our current law is not conducive to being our best or to attracting and retaining talent in our state.

Our current law does not send the message of inclusiveness for all, that all people are welcome to live and work here and that fairness is one of the principles that we hold dear.

In contrast, passing SB 2279 would prove to our citizens that we value them all equally, and it would show to people who are looking to move to North Dakota that they can do so without reservation.

As a result, a "yes" vote for SB 2279 is a vote that will continue to strengthen our business climate and our economy across the state.

I've had the chance to be a part of a number of community-building efforts in Grand Forks, Bismarck and Fargo over the past few years. One thing that I've learned is certain: It's up to us to build and create the communities in which that we want to live.

In working closely with many individuals and organizations, I've learned that the strength of a community often is parallel to its ability to be fair and inclusive. Passing SB 2279 is critical because it shows our LGBTQ friends that they are valued as a member of community just as much as anyone else.

Building on and improving policies that support fairness, safety and inclusion let us work together to create the very best North Dakota that we can.

A yes vote on SB 2279 is a vote that strengthens our communities.

Last but not least, I'm a husband, and I'm also a father to two young daughters, with another baby girl on the way. Author H. Jackson Brown, Jr. once said, "Live so that when your children think of fairness, caring and integrity, they think of you."

I fully understand that my daughters will (more than likely) not think of me as cool, hip, funny or a host of other positive adjectives as we navigate the parent/child relationship over the next few years. But I do hope that someday, they'll look at me and think of their dad as someone who was honest, caring and fair.

/

By treating our LGBTQ friends under the law as we are treated, we give our children a better chance of succeeding in anything they choose to do. A yes vote for SB 2279 is a vote that sets an example and strengthens our future, our children's future and our grandchildren's future.

I support the passage of SB 2279, and I encourage Herald readers to do the same.

A handwritten signature, possibly the letter 'L', is located at the bottom center of the page.

SB 2279
3-23-15

Testimony #13

House Human Services Committee
Representative Robin Weisz, Chair
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Members of the House Human Services Committee,

As your resident of North Dakota, I appreciate all you do to ensure North Dakota is a leader and a great state to live in, work, and raise families. I am writing today to urge you to vote yes on SB2279.

SB2279 would amend the North Dakota Human Rights Act and the North Dakota Fair Housing Act to provide the same protections from discrimination for all North Dakotans. This is important so that no North Dakotan has to live in fear of being fired from a job or kicked out of an apartment based on their sexual orientation.

Businesses, job seekers and their families look for strong and supportive communities where they can thrive and call home. Currently, 21 other states in the country provide protections and it is time for North Dakota to do the same. Our lesbian, gay, bisexual and transgender family members, friend, neighbors, co-workers and fellow congregants shouldn't live in fear of losing their job or their home based on who they are or who they love.

A recent poll conducted by DFM Research reported that 59% of North Dakota residents over the age of 18 support SB2279 to prohibit discrimination based on sexual orientation.

I urge you to follow the direction of the majority of North Dakotans in supporting SB2279. As your constituent, I appreciate all you do to ensure North Dakotans continues to be a leader and a great state for all families. Vote yes on SB2279.

Sincerely,

Lisa Kronoviek
16 2nd Ave NE
Bowman, ND 50623

3-25-15 Rep. Fehr

#1

PROPOSED AMENDMENTS TO SENATE BILL No. 2279

Page 8, remove lines 10 through 31

Page 9, remove lines 1 through 3

3-25-15

Rep. Beadle #2

SB 2279 Amendments

Page 1 Line 2: Delete "14-02.4-14"

Page 1 Line 2: Delete "14-02.4-15"

Page 3 Line 22: Delete "actual or perceived"

Page 4 Line 29: Delete "actual or perceived"

Remove Sections 9 and 10 of the Bill

-Page 8: Lines 10-31

-Page 9: Lines 1-3

Renumber Accordingly

March 31, 2015

15.0742.01005
Title.

Prepared by the Legislative Council staff for
Representative Boschee
March 20, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2279

Page 2, line 13, after "disability" insert ", sexual orientation"

Page 6, line 3, remove "or who adhere to the religion's tenets unless"

Page 6, line 4, remove "membership is restricted because of race, color, or national origin"

Page 6, line 7, remove "or who adhere to the religion's tenets"

Page 11, line 18, after "origin" insert ", sexual orientation"

Renumber accordingly