

2017 HOUSE HUMAN SERVICES

HB 1386

2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

HB 1386
2/1/2017
27751

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Donna Whelan

Explanation or reason for introduction of bill/resolution:

Relating to prohibition of discrimination on the basis of sexual orientation.

Minutes:

Attachments: 1-27.

Chairman Weisz: Called the committee to order. Attendance taken, there was a quorum. Opened the hearing on HB 1386

Chairman Weisz: Is there testimony in support of HB 1386?

Rep. Joshua Boschee, District 44: In support of and introduced HB 1386. (See Attachments # 1). 1:40-11:10

Chairman Weisz: Questions from the committee? Seeing none. Further support for HB 1386?

Andrea Denault, North Dakota Human Rights Coalition: In support of HB 1386. (See Attachment #2). 11:10-14:34

Chairman Weisz: Questions from the committee? Seeing none. Further testimony in support?

Bernie Erickson, North Dakota Citizen: In support of HB 1386. (See Attachment # 3). 14:38-21:20.

Chairman Weisz: Are there questions from the committee? Seeing none. Further testimony in support of HB 1386?

Rep. Beadle, District 27: In support of HB 1386. (See Attachment #4). 22:31-28:41

Chairman Weisz: Are there any questions from the committee? Seeing none. Further testimony in support of HB 1386?

Joe Larson, Pastor of St. Mark's Lutheran Church, Fargo, ND: Gave testimony in support of HB 1386. (See Attachment #5). 28:55-35:35.

Chairman Weisz: Are there any questions from the committee? Seeing none. Is there further testimony in favor of HB 1386.

Paul Schick, Pastor of Trinity Lutheran Church, Bismarck, North Dakota: Gave testimony in support of HB 1386. (See Attachment # 6). 36:00-40:30

Chairman Weisz: Are there questions from the committee? Seeing none. Is there further testimony in support of HB 1386?

Jessica Szwandek, Pastor United Church of Christ: I work with people with disabilities. I want to put a human face to discrimination. I have lost 2 jobs in the last year one for advocacy work in my church and a secular job because of my sexual discrimination. It has been at a tremendous cost to my family financially. I am here to appeal to your sense of moral justice, I don't expect you to agree with my life but I do expect that you are invested in fairness, justice, equality because that is what we are called to do as leaders in this state. We all suffer when there is a significant number of people who don't feel safe. After Donald Trump was elected, we seriously considered immigrating to Canada. I urge you to invest in the safety of our community. If we do not provide protection for so many people it tears apart the very fabric of our community. I ask you to support this bill. 40:49-43:27

Chairman Weisz: Any questions from the committee? Seeing none. Any further testimony in support of HB 1386?

Chase Lingle, 3rd year law student at UND: In support of HB 1386. No written testimony provided. This bill will provide protection for all peoples who face discrimination. If we don't pass this bill it can open the flood gates for anyone to use a person's actual or perceived sexual orientation as a reason to not hire them. This bill broadens our protection for all North Dakotans not just those who identify themselves as LGBT. We send a message every day that says LGBT people are worth less because we as a state do not stand up and say they are worth protecting from discrimination. Going back to SB 2279, this language is practically identical to that bill, some of the issues of that was the language perceived and actual sexual orientation, they felt perceived may open the doors to litigation because someone could bring a claim against someone else for just thinking they may be gay or transgender. The language of perceived is necessary, because no one actually identifies themselves in a job interview because it would expose you to the very discrimination you are seeking to prevent. No one can tell your sexual orientation but you all they decide from is your mannerisms, their perceptions of you and your sexual conduct. All sexual orientation is normal. Further explained support of HB 1386. 43:45-50:48

Chairman Weisz: Are there questions from the committee?

Representative Porter: As you started your testimony you talked about jobs and being discriminated against. How do you know why you didn't get a job?

C. Lingle: You don't know. Until someone comes out and says why you are not getting that job or apartment. That is why we need to have this legislation so if you believe you have been treated unfairly then you can have that investigated.

Representative Porter: You see with this bill the opportunity to challenge through a complaint at the ND Labor and Human Rights commission for every person that doesn't get hired or gets fired? If they didn't get it their way?

C. Lingle: Adding sexual orientation with this bill will only make sure that they can have recourse.

Representative Porter: You think with the unemployment rates in ND at 3% for the last 8 or 9 years, do you really think that employers are discriminating against people?

C. Lingle: I personally have not been discriminated against that I know of, however just because it doesn't happen all the time to LGBT individuals is not the reason we should pass or not pass this bill. If only one individual is discriminated against it is worth it.

Representative Porter: Back to my original question, in the hiring process how would you ever prove it?

C. Lingle: You can't tell until there is an investigation done. 55:10

Representative Porter: Explain to me how this new investigation would work and how you would see it deployed into the business world?

C. Lingle: I really don't know.

Representative Schneider: As a 3rd year law student I am sure you have heard about a establishing a pattern in practice, could that be a way be investigating other complaints that have come against a certain employer that you would establish a pattern of discrimination?

C. Lingle: That would be one way to investigate. Patterns of behavior dictate what we will do in the future. By going back and investigating who they have refused to hire or rent to. It establishes a pattern of behavior that could be a way to infer that this might be what is going on.

Representative D. Anderson: I sometimes think that as an employer that if I had to be afraid of a law suit all the time by discrimination wouldn't it cause an employer not to even look at that group of people? It could cause more problems than less.

C. Lingle: I am not a business owner, so I can't say. We haven't seen business owners pulling back from age discrimination, etc.

Chairman Weisz: Any further questions? Seeing none. Further testimony in support of HB 1386? 59:46

Christine Kujawa, Unitarian Universalist Fellowship and Church Board of Trustees: In support of GHB 1386. (See Attachment #7) 59:49-1:01:18

Chairman Weisz: Any questions from the committee? Seeing none. Further testimony in support of HB 1386?

Cody Schuler, ND Coalition for Homeless People: In support of HB1386. (See Attachment #8) 1:01:43-1:04:50

Chairman Weisz: In your work with the homeless did you find more barriers for the 88 when you were trying to find them housing then you did with the others?

C. Schuler: We are not able to track those numbers. We do have evidence for service providers that we do cue to seek out landlords who are friendly to LGBT and to be able to provide proper case management and assistance to those individuals to reduce the risk of discrimination.

Chairman Weisz: Any questions from the committee? Seeing none. Further testimony in support of HB 1386?

Carol Two Eagle, Spiritual Guide for the Lakota: In support of HB 1386. (See attachment # 9). 1:05:00-1:09:47

Chairman Weisz: Any questions from the committee? Seeing none. Further testimony in support of HB 1386?

Willow Hall, resident of Mandan with 3 children: In support of HB 1386. (See Attachment #10). 1:10:00-1:12:33

Chairman Weisz: Any questions from the committee? Seeing none. Further testimony in support of HB 1386?

Kim Riedlinger Wassim, Citizen of North Dakota: In support of HB 1386. I am testifying on behalf of myself. I have family and friends that happen to be gay, just like I happen to be straight. That is how God made us. I can't stand silently on the sidelines when it comes to LGBT issues. I can't stand to have my friends and family discriminated against because of who they love. My son Daniel is a 2014 graduate of Century High School. He was valedictorian of his class and now attends Georgetown University in Washington DC. He plans to attend law school. He interned at the Attorney General's office and last summer at the US Department of Justice. He is an ordained deacon at our local church. Daniel happens to be gay. I am a proud mom of a young gay man. He will not be coming back to ND to practice and neither will his friends, because he finds North Dakota narrow minded and lacking in diversity. On top of that he has to worry about discrimination should he come home in terms of housing and employment. North Dakota needs our young people to come home and bring their talents and creativity to boost our economy and it won't happen if North Dakota continues to allow discrimination against any segment of our population including the LGBT community. Minnesota has 17 Fortune 500 companies headquartered in their state. North

Dakota has none. LGBT issues are human right issues. We have already protections from the Federal Civil Rights act and the North Dakota Human Rights act already protect special groups of people based on race, religion, color, national origin, sex, age and disability and we need to add sexual orientation to that list. The world is changing and ND needs to change too. I am here to fight for all our citizens including those in the LGBT community. I urge you to support this bill and show the world that North Dakota supports diversity in all its beautiful colors. 1:13:20-1:18:33

Chairman Weisz: Any questions from the committee?

Representative Damschen: Did your son intern at the Attorney General's office and he was also involved at UND?

Kim Riedlinger Wassim: He interned two summers ago for the Attorney General's office and he is attending Georgetown University and he was Valedictorian of his class in 2014 and a National Merit Scholar.

Representative Damschen: I guess if he had these opportunities and earned them in North Dakota, why does he think he was discriminated against?

Kim Riedlinger Wassim: Kim He was not out at that time and since has come out as a gay man and is concerned to come home to work and live. 1:19:47

Chairman Weisz: Further testimony in support of HB 1386?

Vallie D. Needham, student at Bismarck State College and Dickinson State University: I am a bisexual women and I am not out with my job. I am married to a man so I can keep my sexual orientation to myself quite easily for that reason. I come from a family who does not support me. It is very easy to me to just not say anything. This bill is very important to me and people who cannot say anything. Please listen to us who do not feel safe and please protect us in our places of employment and housing so we can continue to be productive in this state. We have a threat that we could lose our job or places to live because of who we are. I urge a Do Pass on this bill. 1:20:36-1:23:49 (See attachment # 11).

Chairman Weisz: Any questions? Seeing none. Further testimony in support of HB 1386?

Kevin R. Tengesdal, Veteran of US Navy, citizen of North Dakota: In support of HB 1386. (See Attachment #12). 1:24:17-1:35:40

Chairman Weisz: Questions from the committee? Further testimony in support of HB 1386?

Nicole Schumaker, Bismarck resident and Veteran spouse: Gave testimony in support of HB 1386. (See Attachment #13). 1:35:49-1:40:45.

Chairman Weisz: Any questions from the committee? Seeing none. Further testimony in support of HB 1386?

Rev. Gretchen Deeg, a local pastor: In support of HB 1386. (See Attachment #14).
1:41:12-1:42:46

Chairman Weisz: Any questions from the committee? Seeing none. Further testimony in support?

Brad Aune, Resident of North Dakota: In support of HB 1386. (See Attachment # 15).
1:43:00-1:49:15

Chairman Weisz: Any questions?

Representative Schneider: Where were you working when you were discriminated against when you were working?

Brad Aune: I would rather not say, it was for the state of ND.

Chairman Weisz: Further questions? Seeing none. Is there further testimony in support of HB 1386?

Jennifer Dunn, Graduate school in Bismarck: Gave testimony in support for HB 1386. (See Attachment #16). 1:50:45-1:54:58.

Chairman Weisz: Questions from the committee? Seeing none. Further testimony in support of HB 1386?

Allen Irish, Licensed Associate Professional Counselor at NDSU: In support of HB 1386. (See Attachment # 17). 1:56:03-2:05:35

Chairman Weisz: Questions? Seeing none. Further testimony in support of HB 1386?

Cinque Anderson, Citizen in Graduate school: In support of HB 1386. (See Attachment #18) 2:06-2:07:54

Chairman Weisz: Questions? Seeing none. Further testimony in support of HB 1386?

Casey Buchmann, Washburn Resident: In support of HB 1386. (See Attachment #19).
2:08:10-2:12:03.

Chairman Weisz: Any questions? Seeing none. Further testimony in support?

Waylon Hedegaard, President of the AFL-CIO: Gave testimony in support of HB 1386. (See Attachment # 20). 2:12:27-2:16:59.

Chairman Weisz: Any questions from the committee? Seeing none. Further testimony in support of HB 1386?

Noel Lugo, Student and resident of North Dakota: Testified in support of HB 1386. 2:18

I don't have a copy of my testimony. I have been fortunate to not have lost opportunities because of my sexual orientation. I have been called a dike, mentally ill, a sinner and while my feelings have been hurt it did not compromise my ability to participate in public life. Shared examples of what life looks like when gender identity is not considered protected classes. (2:18:51) I believe these examples are a reason to show you that you need to pass HB 1386. I want to remind the members of the community that no one is asking you to affirm anyone's lifestyle choices, instead we are asking you to affirm every North Dakotan has the right to engage fully in all aspects of public life. I urge you to make a Do Pass recommendation on HB 1386. 2:20:15.

Chairman Weisz: Any questions? Seeing none. Further testimony in support of HB 1386?

Christina Sambor, Director of FUSE and former Director of the ND Human Trafficking Task Force: In support of HB 1386. (See Attachment # 21). 2:20:40-2:23:55

Chairman Weisz: Any questions from the committee? Seeing none. Further testimony in support of HB 1386?

Kalle Oxborrow, Physical Therapy student: I just urge you to do a do pass on HB 1386, because I think it is the right thing to do as I believe. 2:24:30

Dale Carmen, resident of Bismarck: In support for HB 1386. (See Attachment # 22). 2:24:55-2:27:33.

Chairman Weisz: Are there any questions from the committee? Seeing none. Further testimony in support? Hearing none, we will recess until after floor session. 2:28
Called the committee back to order and reopened the hearing on HB 1386. At this time we will take testimony in opposition to HB 1386.

Suzanne Bowman, Jamestown resident: In opposition to HB 1386.
(See Attachment #23). 2:29:00-2:31:51.

Chairman Weisz: Are there any questions from the committee? Seeing none. Further testimony in opposition to HB 1386?

Mark Jorritsma, Executive Director of Family Policy Alliance of North Dakota: In opposition to HB 1386. (See Attachment #24). 2:30:00-2:41:44.

Chairman Weisz: Are there questions from the committee? Seeing none. Further testimony in opposition to HB 1386?

Linda Thorson, State Director for Concerned Women for America of North Dakota:
In opposition to HB 1386. (See Attachment #25). 2:42:24-45:09

Chairman Weisz: Are there questions from the committee? Further testimony in opposition to HB 1386?

Christopher Dodson, Executive Director Of the North Dakota Conference: In opposition to HB 1386 . (See Attachment #26). 24:46:00-2:51:30

Chairman Weisz: Are there any questions from the committee? Seeing none. Further testimony in opposition to HB 1386?

Bill Schuh, Citizen: In opposition to HB 1386. There are a number of problems with this bill you are taking power and handing it to another group of people and in this case you are handing it to one group with one interest. Once that power is in their hands it can be used to force the beliefs and compliance with other people with what they wish. The second problem with this anybody who can't do what they want to do any place they want to do it is being discriminated against. Anyone who would say otherwise is actin inappropriately. This are the issues I grew up with. Explained why he is against this bill. There is a developmental process involved with this. The Langstrom Studies of this have shown that 65% of male homosexuals are due to previous experiences and things they are exposed to. Among woman it was 80% that had to do with experience. Explained different reasons for this to happen. More than 30 diseases that are directly related to male homosexual activity. Some of them are fatal or life threatening. Freudenberg wrote on psychological issues and the problem is that it is developmental. There is a transformation of our thinking. It was considered at one time to be strictly a moral issue. Recruitment in the school system has been one of the largest portions of the LGBT for many years. New York in the 1980's they were teaching 3rd grade students that homosexual behavior is normal. Therefore, that encourages experimenting and therefore it leads to a life style change. Especially if their other facets of their lifestyle has not been fully developed. The drive to get into education so that they can promote their lifestyle from early on is an area of great concern because we are talking about Child Development. I do appreciate both sides of this and there is no place for discrimination and I have basic respect for everybody. But this movement keeps expanding. Once you pull that plug there is no end to it. We are disconnecting ourselves from biological realities here. Religious exemptions are not meaningful, if you look over the years, it will be gone tomorrow. Religious freedom will disappear along with all of the other freedoms. As an individual that believes in the fact that these are deformed behaviors that I would be forced to photograph a homosexual wedding if I was a photographer and I could not do that because I would be participating in something that I consider to be disordered. We have a great deal of reverse discrimination on this, there is corporations making the people working for them taking sessions to learn of this issue. I do agree no one should be subjected to violence and they should be protected from it. But when you hand a global bill like this to a very heavily funded lobby you put them in a position where they can harass people who are of the other viewpoint or take their children that certain behaviors are correct. The general people cannot defend themselves against a well-funded agenda, and this one is. There are things that need to be worked out but this bill creates a massive imbalance. 2:51:30-3:06:30

Nikki Berg Burin: Written testimony but not given orally. In Support of HB 1386. (See Attachment #27).

Chairman Weisz: Is there further opposition to HB 1386? Seeing none. Hearing closed on HB 1386.

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Human Services Committee
Fort Union Room, State Capitol

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2/8/2017
28040

☐ Subcommittee
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Committee Clerk Signature

Donna Whelan

Explanation or reason for introduction of bill/resolution:

Relating to prohibition of discrimination on the basis of sexual orientation

Minutes:

Attachments 1-3.

Chairman Weisz: Called the committee to order on HB 1386. Attendance taken. Quorum present.

Michelle Kommer, Commissioner of Labor: Neutral testimony for HB 1386.
(See Attachment #1). 1:45-10:25

Chairman Weisz: Any questions?

Representative Porter: Does the Equal Employment Opportunity Commission (EEOC) track by state?

M. Kommer: Yes, they do have that available and I can get it to you.

Representative Porter: Why is there not a fiscal note with this since, if we pass this and you ended up with jurisdiction that your investigators would be locally in the state rather than forwarding them to the Federal government? I would guess it would cost the state something to do the investigations?

M. Kommer: We felt that we could do this without a fiscal note because of the low number of claims looking back 2013-2015.

Representative Porter: When we had the hearing I asked one of the testifiers shared a lawsuit from UND that was based on our employment laws. Based on his testimony that a pool of applicants could apply for a job and any one of the pool if they didn't get the job could instantly file a complaint based on their sexual orientation because they didn't get the job. I am looking at the erosion of our right to work statute on both sides of it. On the pool of employees that now based on his testimony I don't have to hire the best person, I just have to hire the one that is gay and when firing I would be instantly inside of a complaint process with you every time I fire someone if it was perceived that they were fired for something other

than what they were fired for. I would like to hear how the right to work status of the state is effected by this bill.

M. Kommer: The right to work status is not affected by this bill. When using an analogy of an individual who is African American, which is the protected class today, what the testifier didn't walk through is the test for that failure to hire claim is the burden is put on the applicant to show they were discriminated against, specifically because of their protected class. Explained the McDonald Douglas case. The charging party has to prove with direct or indirect evidence, that he wasn't hired because he was African American. The burden is on the applicant to prove that he is part of a protected class and that he was not hired because of his being African American. From there the burden shifts to the employer to show a nondiscriminatory reason why they didn't hire that applicant. Then it shifts back to the employee to prove that reason is true or not. It is not perfectly accurate the scenario that was played out before you in testimony last week.

Representative Porter: Then if you take this to the next level, then the employer says it comes down to 2 people that are equal and I hired this one instead of that one. Did I violate the law or did they use their right to hire the person they thought was the best for the job?

M. Kommer: They did not violate the law. Hiring practices in North Dakota are that they check the applicants and the practices are not altered today by the adding of this amendment it is the adding of an additional protected class.

Representative Porter: One question that came up 2 or 4 years ago inside of the interpretation from the Labor Commissioner was so you hired Steve to sit at your front desk and one day Stephanie shows up and the disruption begins from the standpoint no one wants to come into your business anymore and it is causing problems for you to do business, you terminate Steve and then you get a complaint, how is that handled?

M. Kommer: If they are firing Steve or Stephanie because they are transgender, the way the amendment is written that would be a discriminatory act.

Representative Schneider: Do you refer all of the claims or gender discrimination to the EEOC or some of them? If it just some of them what is the criteria for the referrals?

M. Kommer: If the claims are based on gender discrimination and that is all that is included in the claim then that is referred to the EEOC. It is not always as clear as that, in North Dakota and under Federal law sex is the protected class. So not all of them are referred.

Representative Schneider: Do you get responses back or do you track what happens with the EEOC with the referred cases?

M. Kommer: I do believe we see the results of those.

Representative Schneider: So in some mixed case where part of it fits within our Human Rights act and part is not covered under sexual orientation issues, do you at some point then send on the portion of the mixed complaint that would have to do with sexual orientation and gender identity.

M. Kommer: When we are investigating a case and we find that it is a sexual orientation or gender identity issue then we refer it to the EEOC. There are many times when it is not immediately clear the nature of the complaint.

Representative McWilliams: In the scenario that Representative Porter described if it was found that he was discriminatory what happens?

M. Kommer: Our department first tries to mediate the situation. The consequence could vary greatly. There is not a specific penalty by law.

Chairman Weisz: How is work place harassment treated within the current ND law?

M. Kommer: It is very much the same as the process I described earlier the McDonald Douglas burden shifting analysis. The elements are different, for a hostile working environment claim, it would again be on the employee to prove that they belong to a protected group and was a victim to the harassing conduct, that the employer knew or should have known of the situation and then the burden shifts to the employer and then back to the employee. 23:48

Representative Schneider: Do you get responses back or do you track what happens with the EEOC with the referred cases so we would know how many there are and the resolutions?

Brenda Halvorson, Department of Labor: Compliance Investigator: When we refer a case to the EEOC that is dual filed, we hear back in the long run what happens to it. In a sexual orientation case I am not sure we hear back but we can find out for you.

Chairman Weisz: Any further questions? There are some suggested amendments.

Representative T. Beadle: I do have 2 different amendments for the committee to look at. They can be used in concert with each other and it tries to take away the concerns of businesses to do work as they see fit. Explained the amendments. (See Attachments # 2, 3). 25:15- 29:11.

Representative Porter: You almost go full circle with this to the point that we heard the arguments on the floor and the committee that the public employment has been dealt with through the executive branch and if there isn't an issue, why do the bill?

Representative Beadle: On the state level there has been some steps to certainly do that with the Governor Dalrymple directive and the Federal, but the as the Labor Commissioner attested to doesn't apply to sexual orientation it just applies to the transgender piece. Sexual orientation is not in case law right now. That is the portion that could still use some cleaning up on there.

Representative Porter: It is in the Governor's employment handbook for the executive branch.

Representative Beadle: It is in the handbook for the executive branch but as we all know there is more levels of government than the executive branch and this language goes to public employment and public housing so it would apply to political subdivisions as well.

Representative Porter: Has there been any documentation that there is a problem in political subdivisions with relation to this that they are not handling it correctly inside of their own personnel policies? We had no testimony whatsoever to support this type of an amendment.

Representative Beadle: I can't attest to the fact that there has been a problem within political subdivision on this, this would rather us taking the official stance as the state saying we don't condone discrimination. We already agreed on the floor last session that we don't want discrimination in the state. This would make it in statute that as a state we don't discriminate.

Representative Porter: HB 1386 was defeated last session and the session before. Why did you sign on to this bill?

Representative Beadle: There was another bill floating around and we decided to go with this one and not add more to the amendments in 1002. I signed on to the bill because I have friends who are gay and transgender that have had instances where they are discriminated against. So I don't think we want to be as a state we want to be on record as condoning that. The reason it was defeated before was the confusion over the actual or perceived language and the confusion over gender identity language and the arguments brought forth by the Catholic Conference and Family Alliance in terms of violating religious freedom of the individual or the individual in your scenario where Steve becomes Stephany and it disrupts your business. But we still said as a state we say we don't support discrimination and we won't use taxpayer dollars to support it.

Chairman Weisz: By removing your language as far as gender and perceived gender, does that really change, you are still leaving sexual orientation then?

Representative Beadle: The sexual orientation is what we are all familiar with as gay, lesbian and bisexual.

Chairman Weisz: I understand that but it still doesn't address what perceived means.

Representative Beadle: It comes down to if you remember the Sand L skit of what's that its Pat where it was the androgynous nature of the individual. That is where the actual or perceived language is coming into it. It is not that today I perceive myself as this. It is if you as a male are constantly being made fun of or teased because you are more feminine than other men, whether you are gay or straight. That is somebody else putting that impression on you. We always interpret this as oh well I perceive myself as this today when that is not the way it actually is. What this does is provide a state level jurisdictional issue as opposed to the EEOC issue. Sexual orientation is not already against the law as the Labor Commissioner attested to.

Chairman Weisz: Further questions from the committee? We have two sets of amendments here. The preference would be to use 1002 and the next would be to use 1001 if we don't like the first one. The way I interpreted it. The differences between one and two is the public services and the credit transactions just adding that in. 1002 doesn't remove Page 3 line 25 that gender identity actual or perceived. The reason I ask the question of orientation because even under the definition on page 5 it still uses "actual or "perceived". Do we change if there is concern about the word perceived? What does the committee want to do?

Representative Schneider: I would move the amendments 01001.

Vice Chairman Rohr: Seconded.

Chairman Weisz: Let's talk about it. It does remove gender identity on page 3 line 25.

Representative Porter: It is renumbering things and it adds nothing to the language on page 6 in regard to religious organization. That language would stay in.

Chairman Weisz: It looks to me in theory you could discriminate under public accommodations because it does not apply to a practice with regard to public accommodations under sections. On page 3 the definition of gender identity is gone.

Representative Beadle: You are correct it does remove public accommodations.

Representative Porter: As you are putting this into the bill perceived remains in there.

Chairman Weisz: If you look after 6 they have a,b and c, that is current law and under 6 a you have 1,2,3. Then you are adding a new subdivision b which says it would include public accommodation and we are removing on page 3 the definition of gender identity and on page 8 removes lines 18-27 and page 9 lines 7-16. Really everything else remains the same and it renumbers everything. Is everyone clear on the amendment?

Representative Porter: If you are putting this into the bill then on page 5 line 1 the word perceived stays in there?

Chairman Weisz: It remains in there without the definition of sexual orientation with gender identity just removed as a definition.

Representative Porter: They insert the word or so perceived then relates to heterosexuality, bisexuality or homosexuality.

Chairman Weisz: Page 5 line 2 they took out gender identity there and that would change the definition. Gender identity goes away and in the definition of sexual orientation. Any questions, I want to make sure the committee understands the amendment. Any discussion? Seeing none. The clerk will take the roll on the motion to adopt the amendment 01001 to HB 1386.

Roll call vote: Yes 2. No 10. Absent 2. Motion failed.

Representative Schneider: I move that we adopt the amendments 01002.

Representative Porter: Seconded the motion.

Chairman Weisz: This one is similar but it does not remove gender identity. It does broaden the exemptions to not only public accommodations but also public services and credit transactions. We are removing the language to all the other sections from page 8 through the end of the bill and it doesn't change current law.

Chairman Weisz: Is the committee clear on what this amendment does?

Representative Damschen: I am a little concerned with whether this narrows it or broadens it. When you specify things you put regulations on them and make a broad statement you kind of leave everything open.

Representative Schneider: Just to reiterate the testimony of Rep. Beadle. What this does is it takes a broad bill that would apply to everyone in the state and narrows it down to just the public sector. I personally don't want that to happen because I think we should be nondiscriminatory throughout the state but it is a real considerable narrowing when we just focus on public employees. It takes the private sector out of it by this amendment.

Chairman Weisz: Further discussion on the amendment?

Representative McWilliams: Then this amendment leaves gender identity in here.

Chairman Weisz: Yes, but it only applies to the state and not to the private sector.

Representative Damschen: I am not for discrimination against anyone including the LGBT at any level. I think the constitution of the State and the United States guarantees everyone freedom from discrimination and no one is listed as an exception.

Chairman Weisz: Any further discussion. Seeing none. The clerk will call the roll on adopting the amendment 01002.

Roll call vote: Yes 2. No 11. Absent 1. Motion failed.

Chairman Weisz: That motion failed. We have HB 1386 in front of us as is.

Representative B. Anderson: I make a motion for a Do Not Pass on HB 1386.

Representative McWilliams: Seconded.

Representative Schneider: We have had it before and we will have it again, because we need to have protections against discrimination in housing and employment based on sexual identity and orientation. It is 5 to 1 in the testimony for this bill. We are way behind in dealing with this situation, we can't ignore what they are describing. I think we are better than what we have been doing. I say we should take a stand against the do not pass and take a stand that we are all created equal.

Representative McWilliams: I supported the amendments because I thought then maybe we won't see it again next session. I don't really want to see this again. I don't support this bill in its form, but I think we need to do something. We don't support discrimination in North Dakota as we all believe and also to make sure we protect our religious freedoms at the same time.

Chairman Weisz: Any further comments? Seeing none. The clerk will call the roll on a Do Not Pass on HB 1386.

Roll Call Vote: Yes 12. No 1. Absent 1. Motion carries for Do Not Pass on HB 1386.

Chairman Weisz: Will carry the bill. Hearing adjourned.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1386

Page 1, line 2, remove "subsection 1 of section"

Page 1, line 3, remove "14-02.4-14,"

Page 1, line 3, remove "14-02.4-16,"

Page 2, line 14, after "6." insert "a."

Page 2, line 27, overstrike "a." and insert immediately thereafter "(1)"

Page 3, line 1, overstrike "b." and insert immediately thereafter "(2)"

Page 3, line 4, overstrike "c." and insert immediately thereafter "(3)"

Page 3, after line 9, insert:

"b. Notwithstanding subdivision a, "discriminatory practice" as it applies to an act or attempted act because of sexual orientation, does not apply to a discriminatory practice with regard to public accommodations under sections 14-02.4-01, 14-02.4-14, 14-02.4-16, or 14-02.4-19."

Page 3, line 25, remove ""Gender identity" means actual or perceived gender-related identity, appearance, or"

Page 3, remove lines 26 and 27

Page 3, line 28, remove "11."

Page 4, line 1, remove the overstrike over "11."

Page 4, line 1, remove "12."

Page 4, line 3, remove the overstrike over "12."

Page 4, line 3, remove "13."

Page 4, line 5, remove the overstrike over "13."

Page 4, line 5, remove "14."

Page 4, line 10, remove the overstrike over "14."

Page 4, line 10, remove "15."

Page 4, line 17, remove the overstrike over "15."

Page 4, line 17, remove "16."

Page 4, line 20, remove the overstrike over "16."

Page 4, line 20, remove "17."

Page 4, line 23, remove the overstrike over "17."

Page 4, line 23, remove "18."

Page 4, line 30, remove the overstrike over "~~18~~."

Page 4, line 30, remove "19."

Page 5, line 1, remove the overstrike over "~~19~~."

Page 5, line 1, remove "20."

Page 5, line 1, after the second underscored comma insert "or"

Page 5, line 2, remove ", or gender identity"

Page 5, line 3, replace "21." with "20."

Page 8, remove lines 18 through 27

Page 9, remove lines 7 through 16

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1386

Page 1, line 2, remove "subsection 1 of section"

Page 1, line 3, remove "14-02.4-14, sections 14-02.4-15, 14-02.4-16, and 14-02.4-17,"

Page 1, line 4, after the sixth comma insert "and"

Page 1, line 5, remove ", subsection 11 of section 26.1-04-03, subsection 1 of section"

Page 1, remove line 6

Page 1, line 7, remove "sections 26.1-47-04 and 27-09.1-02"

Page 2, line 14, after "6." insert "a."

Page 2, line 27, overstrike "a." and insert immediately thereafter "(1)"

Page 3, line 1, overstrike "b." and insert immediately thereafter "(2)"

Page 3, line 4, overstrike "c." and insert immediately thereafter "(3)"

Page 3, after line 9, insert:

"b. Notwithstanding subdivision a, "discriminatory practice" as it applies to an act or attempted act because of sexual orientation, does not apply to a discriminatory practice with regard to:

(1) Public accommodations under sections 14-02.4-01, 14-02.4-14, 14-02.4-16, or 14-02.4-19;

(2) Public services under sections 14-02.4-01 and 14-02.4-17; and

(3) Credit transactions under sections 14-02.4-01 and 14-02.4-17."

Page 8, remove lines 1 through 29

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 8

Page 11, remove lines 30 and 31

Page 12, remove lines 1 through 29

Page 13, remove lines 1 through 4

Renumber accordingly

Date: 2-8-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1386

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: amendment ending . 01001

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. Schneider Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz		✓	Rep. P. Anderson	AB	
Vice Chairman Rohr		✓	Rep. Schneider	✓	
Rep. B. Anderson		✓			
Rep. D. Anderson		✓			
Rep. Damschen		✓			
Rep. Devlin		✓			
Rep. Kiefert		✓			
Rep. McWilliams	✓				
Rep. Porter		✓			
Rep. Seibel	AB				
Rep. Skroch		✓			
Rep. Westlind		✓			

Total (Yes) 2 No 10

Absent 2

Floor Assignment _____

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

Motion failed.

Date: 2-8-17
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1386

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: amendment ending . 01002

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. Schneider Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz		✓	Rep. P. Anderson	AB	
Vice Chairman Rohr		✓	Rep. Schneider	✓	
Rep. B. Anderson		✓			
Rep. D. Anderson		✓			
Rep. Damschen		✓			
Rep. Devlin		✓			
Rep. Kiefert		✓			
Rep. McWilliams	✓				
Rep. Porter		✓			
Rep. Seibel		✓			
Rep. Skroch		✓			
Rep. Westlind		✓			

Total (Yes) 2 No 11

Absent 1

Floor Assignment _____

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

Motion failed

Date: 2-8-17
Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1386

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. B. Anderson Seconded By Rep. Mc Williams

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. P. Anderson	AB	
Vice Chairman Rohr	✓		Rep. Schneider		✓
Rep. B. Anderson	✓				
Rep. D. Anderson	✓				
Rep. Damschen	✓				
Rep. Devlin	✓				
Rep. Kiefert	✓				
Rep. McWilliams	✓				
Rep. Porter	✓				
Rep. Seibel	✓				
Rep. Skroch	✓				
Rep. Westlind	✓				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Weisz

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

REPORT OF STANDING COMMITTEE

HB 1386: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1386 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1386



North Dakota House of Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

**Representative
Joshua A. Boschee**

District 44
517 First Street North
Fargo, ND 58102-4540

Cell: 701-367-3513
jboschee@nd.gov

Committees:

Agriculture
Economic Development, Business and Labor

HB 1386 Testimony
Representative Joshua A. Boschee, District 44
House Human Services Committee - February 1, 2107

AH. 1
HB 1386
2-1-17

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.

The bill before you is the same bill that was introduced in previous sessions, 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 will allow the state Department of Labor and Human Rights to investigate such claims on behalf of North Dakotans.

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. HB 1386 does this by sending a signal to lesbian, gay, bisexual and transgender 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 2017 Legislative Agenda Value Statements, the Economic Development Association of ND states:

"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 by the Greater North Dakota Chamber 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."

Fortune 500 companies provide protections against discrimination based on sexual orientation and 66% based on gender identity. Employers in North Dakota like Sanford Health, 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. Fargo, Bismarck and Grand Forks have nondiscrimination policies for their employees and services they provide. Grand Forks is able to afford protections from rental discrimination through their rental registry. As recently as the other evening (January 30, 2017), President Trump stated that he would not rescind President Obama's executive order stating that federal contractors could not discriminate based on sexual orientation and gender identity. All of these examples are because these employers and public entities know these policies are good for their companies, good for their citizens and good for their communities.

While it's great that these employers provide these protections, employees who are protected while at work, are not protected in their housing or ability to participate in commerce throughout the state.

When employees look for a place to work and live, North Dakota has to compete with 20 other states that have nondiscrimination policies already in place including several in our region MN, IA, IL, WI, CO, UT and NM. Passing HB 1386 will open up North Dakota to a number of employers and employees who may have never considered the opportunities our great state provides.

Some 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 reality of 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.

In fact, if any of you have attended a Vikings or Twins game, shopped at the Mall of America, enjoyed Valley Fair or simply driven through Minnesota in the past 24 years, you will have spent time in a state that has had this law on the books. In 1993, Minnesota amended their state Human Rights Act to include these same protections.

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.

Attached to my testimony is a summary of complaints made to the state Department of Labor and Human Rights over the past few years. While the Department is not able to investigate these

complaints, they have agreed to track them for data purposes. As you can see a number of people have reached out to them since the last session, alone. Again, these are only the people who have reached out to the Department, meaning there is likely additional instances of discrimination that go unreported.

Additionally, I have provided written testimony from the Executive Director of High Plains Fair Housing, based out of Grand Forks. I want to highlight to the committee her testimony states the following:

"Our office runs a hotline for victims of housing discrimination. From calls that we receive, we have learned LGBT individuals and families in North Dakota are often met with antagonism and hostility from landlords and property managers. Sometimes this is in the outright denial of a unit or contract and other times it is retaliatory or hostile behavior, such as not responding to maintenance calls or being "pushed out". Yet when these actions occur, these individuals and families do not have recourse. While we are unable to file formal discrimination complaints with HUD or the North Dakota Department of Labor and Human Rights we track the calls and note the incidents, but this provides little relief for the victims of this discriminatory behavior. The fact that High Plains Fair Housing Center and the Department of Labor and Human Rights receive any calls is remarkable, because there are no LGBT protections, not recourse and no outreach and still people who experience LGBT discrimination reach out and try to find help."

Passing HB 1386 tells the employers and landlords who wish to discriminate based on who someone is or who they love, 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 HB 1386 is a statement to LGBT North Dakotans, their families 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.

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 Weisz and committee members, I ask for a DO PASS recommendation on HB 1386 so that our LGBT family members, friends and constituents can live free from the fear of discrimination in North Dakota. I will stand for any questions.



High Plains
Fair Housing Center

January 30, 2017

Human Services Committee
House of Representatives
North Dakota Legislature
Bismarck, ND 58506

Dear Chairman Weisz and members of the Human Services Committee,

My name is Michelle Rydz and I am the Executive Director of High Plains Fair Housing Center. We are the only organization in the state of North Dakota whose mission is **strengthen communities and to ensure equal access to fair housing** in the region through training, education, enforcement and advocacy. Fair Housing is a right protected by federal and state laws. I speak to the housing aspect of this bill.

I write with a do-pass recommendation on H.B. 1386.

The Fair Housing Act was passed on April 11, 1968 it was passed exactly a week after the assassination of the Rev. Dr. Martin Luther King, Jr. as a tribute to him and the work he did to challenge residential segregation. Since that time, the Fair Housing Act has been amended on several occasions to address housing discrimination based on sex (1974) and against people with disabilities and families with children (1988). Since 1999, when the North Dakota Housing Discrimination Act became effective, discrimination in housing has also been prohibited by state law. The Housing Discrimination Act provides the same protections against discrimination as the federal Fair Housing Act, plus three more protected categories.

The fair housing act recognizes the concept of home as a basic right. Everyone has the right to live where they want safe and free from hate and discriminatory behavior.

Our office runs a hotline for victims of housing discrimination. From calls that we receive, we have learned LGBT individuals and families in North Dakota are often met with antagonism and hostility from landlords and property managers. Sometimes this is in the outright denial of a unit or contract and other times it is retaliatory or hostile behavior, such as not responding to maintenance calls or being "pushed out". Yet when these actions occur, these individuals and families do not have recourse. While we are

unable to file formal discrimination complaints with HUD or the North Dakota Department of Labor and Human Rights we track the calls and note the incidents, but this provides little relief for the victims of this discriminatory behavior. The fact that High Plains Fair Housing Center and the Department of Labor and Human Rights receive any calls is remarkable, because there are no LGBT protections, not recourse and no outreach and still people who experience LGBT discrimination reach out and try to find help. I suspect upon passage of H.B. 1386 that we will see many more reported instances of discrimination.

We are more alarmed because of the rising instances of hate speech and behavior in our state. It has never been easy for LGBT individuals to find safe housing that is free from discrimination, but as the country becomes more accepting of LGBT rights, others who are not as accepting respond with incidences of hate speech and actions. Sadly, hate crimes are on the rise in nationwide and in North Dakota. According to FBI statistics, approximately one-third of all hate crimes occur near a person's residence.

Passage of H.B. 1386 is also in keeping with HUD's regulations which require HUD funded housing and for mortgages insured by the Federal Housing Administration (FHA) to be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. HUD also clarifies that the terms "family" and "household," as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity, or marital status. Finally, HUD prohibits FHA lenders from taking into account actual or perceived sexual orientation or gender identity in determining the adequacy of a potential borrower's income.

Passage of H.B. 1386 would help stem any discriminatory behavior in housing and send a clear message that hate speech and actions are not allowed in our community.

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

Sincerely,


Michelle Rydz, Executive Director

Department of Labor & Human Rights

Complaints Since June 2015

Jenna B.

Jenna worked for her Grand Forks employer for four years before being terminated April 2015. She feels that she was treated differently from her co-workers because of her sexual orientation and when she brought up her concerns with her employer was given written performance warnings. She contacted the Department of Labor and Human Rights in July 2015.

Jesse L.

Jesse worked for a Bismarck employer and had no complaints noted against him. When he was assigned a new manager, that manager continually harassed him by making fun of his sexual orientation in front of other employees. Various other employees proceeded to harass him, following their managers example. Jesse informed his manager that employees were working illegally in August 2015 and a few days later was suspended from work. He filed a discrimination complaint with his employer's Human Resources and was fired two weeks later. He contacted the Department of Labor and Human Rights in October 2015.

Vicki M.

Vicki worked for a Belcourt employer and was fired in July 2015, which she feels is because she is lesbian. She contacted the Department of Labor and Human Rights in February 2016.

Brynner R., Aaron K. and William C.

Brynner, Aaron and William are patients at the State Hospital in Bismarck. They complained to the Department of Labor and Human Rights in June 2016 that they were being discriminated against because of their gender identity and were retaliated against when they asked for accommodations to their treatment.

John R.

John has worked for a Minot employer since 2000. When he was assigned a new supervisor in 2013, the supervisor perceived John of being gay and harassed him continually, after repeated requests by John for her to stop. John filed a complaint through the appropriate channels of his employer and the harassment stopped. However, the supervisor started retaliating against John with disciplinary warnings and two-month performance reviews. He contacted the Department of Labor and Human Rights in December 2016.

Randy J.

Randy contacted the Department of Labor and Human Rights in December 2016 to complain of housing and employment discrimination.

Unknown Male 1

The Department of Labor and Human Rights was contacted by phone in January 2017 by a male who believe he was black listed from his employer because he is perceived to be gay. He stated he was not gay.

Department of Labor & Human Rights

Complaints Since June 2015

Unknown Male 2

The Department of Labor and Human Rights was contacted by phone in March 2016 by a male who believes he was fired from his job for being openly gay.

Unknown Male 3

The Department of Labor and Human Rights was contacted by phone in December 2015 by a parent of a man who lives and works in Bismarck. The parent was concerned as his son was harassed daily by his employer with gay jokes.

Bruce S.

Bruce contacted the Department of Labor and Human Rights by phone in December 2015 stated he was discriminated against by a public housing authority and property management group because of his sexual orientation.

SB 2279 Stories Shared During Testimony

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.

AH. 2
HB 1386
2-1-17



Chairman Weisz and members of the committee,

My name is Andrea Denault and I represent the North Dakota Human Rights Coalition. There are many people here today wishing to speak on their own personal experience so I will keep my statements brief.

I just want to touch on two different bodies of data, previously unavailable in former sessions where we've tried to pass this legislation before.

In the last session, members of this committee stated that they did not see a need to add protection for LGBT folks to nondiscrimination policy in the state. They said there was no record of discrimination cases filed therefore no proof of a problem even exists.

Well, since June 1st of 2015 the North Dakota Department of Labor finally began manually recording discrimination complaints that came through their office. In a period of just over 19 months, 17 complaints made specifically on the basis of sexual orientation were reported.

At nearly one complaint every month, this number is actually alarmingly high considering that many people who do experience discrimination never bother to report it. Remember, as long as this type of discrimination remains legal in North Dakota, people have very little incentive to come forward as they know there will be no legal recourse.

Now the next body of data I want to share with you comes from a non-partisan North Dakota-focused think tank called ThinkND. ThinkND conducted a comprehensive statewide telephone survey in August of 2015. They polled on a number of different issues, nondiscrimination being one of them.

Of the total respondents who participated...

41% self-identified as being conservative
42% self-identified as being moderate or independent
ONLY 10% self-identified as being liberal

Next, respondents were asked about the legislature's most recent vote (SB 2279-2015 legislature) to allow discrimination in hiring on the basis of sexual orientation. At 73% the overwhelming majority of people said they disagreed with the legislature's decision. The percentage of those polled under age 50 was even higher coming in at 78%.

The vast majority of Republicans, Democrats, and Independents all agreed on this issue and disagreed with the legislature.

As you can see, this type of legislation is no longer a partisan issue. Just four weeks ago in the North Dakota state senate, there were more Republicans than Democrats who voted in favor of a marriage equality bill. In a subsequent conversation with one of said Republican senators, I asked how his constituents felt about his vote. He said he had received nothing but thanks for voting in favor of marriage equality.

Mr. Chairman and members of the committee, your state overwhelmingly supports equal protections for LGBT residents and as their elected representatives, you should too.

Thank you for your time. I will stand for any questions.

2

Att 3
HB1386
2-1-17

Good Morning Representative Weisz and Health and Human Services Committee Members,

Thank you for the opportunity to address the committee on this important issue. I'm Bernie Erickson, and you may remember me from two years ago, when I addressed many of the same committee members on this topic.

Equal protection legislation for the LGBT community has been brought forth in 2009, 2011, 2013, 2015 and now in 2017.

Let's hope 5th time's a charm.

My husband David and I were married in Canada in 2006, we were one of the 7 couples who filed suit for marriage equality in 2014.

You all know how that turned out.

So many people ask me why I do this kind of thing.

I do this because I can.

David and I work for great companies; have a great support system of family and friends; and own our home.

No one can really take anything away from us.

But that's not the case for a significant portion of ND citizens.

People also ask me about what discrimination I've experienced.

My private life became more public when I was in my late 30's. At that time, I was also in a position where I wasn't worried about what I stood to lose.

And that's also not the case for a significant portion of ND Citizen.

There's a lot of people in this room who live in fear of losing their job or their home because of who they are or who they love.

Appealing to common decency has not worked with ND lawmakers the past 4 sessions, so I gathered some numbers to illustrate the economic impact of ND lawmaker's contempt for the GLBT community.

I make my living in residential real estate.

It occurred to me a couple years ago, I run into clients who refuse to purchase in ND because of discrimination laws.

Here's the thing: they're not worried about discrimination and most are straight couples who have never experienced discrimination.

They don't want to live in a state where lawmakers have such contempt for significant portions of their citizens.

In Fargo-Moorhead there are about 800 licensed real estate agents. Average home price in FM is about 220,000.

For the sake of easy math, lets say 600 agents each lose one 200,000 ND transaction to a client who chooses to live in MN rather than ND.

That's 120,000,000 in real estate volume demand shifted to MN from ND. I know. I did the math at least five times, including once before I put this on paper.

One hundred and twenty million dollars in housing demand shifted to MN from ND. Not necessarily because of discrimination, but because they don't want to deal with the contempt of ND lawmakers.

The past two years, David and I have experienced some very concerning discrimination.

And that discrimination has come directly from North Dakota law makers.

Obviously, there was the shameful voting down of Senate Bill 2279 two years ago.

Representative Weisz heard hours of testimony, and reported to the floor that he hadn't heard any real examples of discrimination and the committee recommended 'do not pass' on 2279.

And it failed miserably.

Our most recent blatant discrimination happened in this building a few weeks ago.

Our marriage equality case was stayed until the United States Supreme Court considered two other cases regarding marriage equality. David and I stood on the steps of the Supreme Court the morning opening arguments were presented. It was quite a surreal experience.

On June 25, the Supreme Court issued its opinion and marriage equality became the law of the land.

Fully understanding the ND legislature was not slated to meet until this January, no one even remotely expected a special session would be called to amend existing statute to reflect equality.

But we did expect it would happen in this session.

And you also know how THAT turned out.

Republican Senator Kelly Armstrong went on record saying in effect that refusing to update language to reflect marriage equality would be highly symbolic of North Dakota's position on marriage, and the likelihood of litigation would be remote.

Sentator Janne Myrdal went on record saying to the effect that updating language in existing marriage laws will diminish the sanctity of male/female marriages and should not happen.

Both have since been informed by our attorney; that is not necessarily the case.

Opinions and observations are one thing, but what do I have to back this up?

This is a screen shot of Senator Janne Myrdal's facebook page, with Hitler dressed in pink and his Nazi armband replaced with a pink heart.

It was on her ND Senate page.

And this image was on her ND Senate page 2 weeks ago. Publicly, she stated she had overwhelming support for her vote against marriage equality.

But it seems that possibly some other feedback set her off.

I wrote her a letter expressing my disappointment on Sunday; and this appeared on her page Tuesday.

To be clear: the Nazis exterminated millions of Jews, gays, disabled, and minority citizens in one of the darkest times of the last century.

LGBT activists work relentlessly to bring equal rights to everyone.

There's a big difference, at least in a rational person's mind.

I've been watching Representative Kiefert squirm in his seat, and yes; I did bring a screen shot of your reaction to marriage equality.

Rep. Kiefert has the utmost contempt for gay people, and he will soon be voting to maintain his civil rights and deny civil rights to you.

Senator Myrdal's behavior is beneath contempt, and she will also vote to keep her civil rights and deny civil rights to you.

Thank you for your time, and I welcome your questions.

A.H. 4
HB 1386
2-1-17

HB 1386
House Human Services Committee

Chairman Weisz and members of the House Human Services Committee,

For the record, my name is Thomas Beadle, state Representative from District 27 in Fargo. Those of you who have served on this committee know that I am strongly in support of this issue today, because I believe that being gay is not a personal choice. That is who they are. Because of this, I adamantly feel that we should ensure that they have the same protections and opportunities as everyone else, and a red light on this bill would mean that our state is taking a stance that it is okay to have an unlevel playing field in regards to opportunities for employment, shelter, insurance protection, and basic civil liberties.

Honestly, I wish that this discussion didn't need to be had. If we could just simplify our century code to simply read: "Don't be a jerk and treat everyone fairly, kindly, and like you want to be treated" than this would all be settled. Unfortunately, we know that sometimes there needs to be some teeth to back it up, as there are a few bad actors. They may be the minority, and it may not happen often, but it still happens. Because of this, we need bills like this to be discussed.

Republicans siding with this issue is not new or unheard of. Barry Goldwater, the Republican presidential nominee in 1964 and longtime Senator from Arizona was an early champion for the cause after leaving the US Senate. In the early 90s, he lobbied on behalf of the Americans Against Discrimination in conjunction with the Human Rights Campaign fund to champion allowing homosexuals to serve in the military and fought for lgbt nondiscrimination protection for jobs in Phoenix after businesses there were found to be discriminating against homosexuals. According to Goldwater, "The big thing is to make this country, along with every other country in the world with a few exceptions, quit discriminating against people because they're gay. You don't have to agree with it, but they have a constitutional right to be gay." Goldwater argued that this is not about creating a separate class, but ensuring constitutional protection applies to them. Currently, most groups are covered, be it by religion, sex, age, but there seems to really be one core group that is left out. If we truly want to make society equal, and provide the same opportunities for employment and career growth for everyone, than we need to either add the last core group that is not covered by the discrimination protection umbrella, and bring them under that same umbrella, or we need to remove the umbrella all together and have everybody excluded. Since I don't see us ever getting rid of the notion of protected classes, than we need to bring the remaining disenfranchised groups into the fold.

Prominent Business leaders nationally and in this state are fighting for nondiscrimination laws. Walmart, Apple, Angie's List, Nascar, the NCAA, Target, Microsoft and many others have urged for LGBT protections and have fought against laws that they see as discriminatory. Our Governor, Doug Burgum, took over Joel Heitkamp's show on KFGO for over an hour last session arguing why last sessions 2279, which is identical to this bill, should have been passed. They feel that defeat of bills like these sends a message that our state is only open for some. Former Minnesota Governor Tim Pawlenty has gone on record stating that the Republican party needs to take notice of what's going on around the country, and alludes to recent actions that Walmart has taken in Arkansas in defense of LGBT rights, saying that "The Republican Party will have to better stand for" ideas on helping the middle class, and the party's leaders must be "willing to put forward that will help modest income workers, and prohibit discrimination in things such as jobs, housing, and public accommodation against gays and lesbians."

Numerous polls show that society as a whole, especially young members, are shifting towards this viewpoint. A Pew research poll from September of last year showed 1 in 5 US adults say their views on

homosexuality have changed over the past few years, with data showing us becoming much more accepting. The most common reason for a change in viewpoint is knowing someone who is gay. US adults under age 30 is where we see the biggest shift. 2/3 of those ages 18-29 say transgender people should be allowed to use public restrooms matching their current gender identity. A Human Rights Coalition poll that was conducted nationally in the wake of the Indiana and North Carolina debates recently showed that federal support for nondiscrimination protection for the LGBT community is 69% in favor to 27% against.

Mr. Chairman, members of this committee, you will hear plenty of testimony today from individuals telling you their personal struggles

The New York Times | <https://nyti.ms/2jPkv15>

U.S.

Boy Scouts, Reversing Century-Old Stance, Will Allow Transgender Boys

By NIRAJ CHOKSHI JAN. 30, 2017

Reversing its stance of more than a century, the Boy Scouts of America said on Monday that the group would begin accepting members based on the gender listed on their application, paving the way for transgender boys to join the organization.

“For more than 100 years, the Boy Scouts of America, along with schools, youth sports and other youth organizations, have ultimately deferred to the information on an individual’s birth certificate to determine eligibility for our single-gender programs,” the group said in a statement on its website. “However, that approach is no longer sufficient as communities and state laws are interpreting gender identity differently, and these laws vary widely from state to state.”

The announcement, reported on Monday night by The Associated Press, reverses a policy that drew controversy late last year when a transgender boy in New Jersey was kicked out of the organization about a month after joining.

“After weeks of significant conversations at all levels of our organization, we realized that referring to birth certificates as the reference point is no longer

sufficient,” Michael Surbaugh, the Scouts’ chief executive, said in a recorded statement on Monday.

The announcement came amid a national debate over transgender rights, with cities and states across the nation struggling with whether and how to regulate gender identity in the workplace, in restrooms and at schools.

In recent years, the Boy Scouts of America has expanded rights for gay people. In 2013, the group ended its ban on openly gay youths participating in its activities. Two years later, the organization ended its ban on openly gay adult leaders.

Advocates for gay and transgender people who had pushed for changes in Boy Scouts’ policy praised Monday’s announcement.

“From our perspective, they clearly did the right thing,” said Zach Wahls, who co-founded Scouts for Equality, a nonprofit group that advocates for stronger protections in the organization for gays and transgender people. “My team and I knew that they were considering a policy change, but we are both heartened and surprised by how quickly they moved to change the situation.”

Last year, in response to parent complaints, the Boy Scouts of America removed an 8-year-old transgender boy from the Secaucus, N.J., Cub Scout pack he had joined just about a month earlier, according to The Record, a newspaper in northern New Jersey.

“It made me mad,” Joe Maldonado, the boy, told the newspaper. “I had a sad face, but I wasn’t crying. I’m way more angry than sad. My identity is a boy. If I was them, I would let every person in the world go in. It’s right to do.”

Joe’s case may have been the first in which a transgender boy was ejected from the program, Mr. Wahls, a former Eagle Scout, said.

When Mr. Wahls helped found Scouts for Equality in 2012, the Boy Scouts of America did not yet allow gay scouts or leaders, and “there was zero conversation about transgender issues.”

While he was encouraged by what appeared to be the group's quick decision on accepting transgender scouts, Scouts for Equality plans to push for a more formal policy, Mr. Wahls said.

"We want to make sure that they work with experts who have experience with transgender youth and youth programs," he said.

The Boy Scouts of America claim nearly 2.3 million members between the ages of 7 and 21, and the group counts many notable figures among its alumni and volunteers.

One of them, Rex W. Tillerson, President Trump's nominee for secretary of state, was involved in getting the organization to accept gay scouts and leaders. He was the national president of the Boy Scouts of America from 2010 to 2011 and served on its executive board in 2013 when it voted to lift the ban on gay scouts.

That decision came after years of reluctance from the organization and a wrenching internal debate that involved threats from some conservative parents and volunteers that they would quit. When the ban on gay leaders was reversed in 2015, the Mormon Church, the largest sponsor of scouting units, briefly threatened to leave the group as well.

A version of this article appears in print on January 31, 2017, on Page A1 of the New York edition with the headline: Boy Scouts Expand Rules for Inclusion.

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Religion & Public Life

MENU

RESEARCH AREAS

SEPTEMBER 28, 2016

WHERE THE PUBLIC STANDS ON RELIGIOUS LIBERTY VS. NONDISCRIMINATION

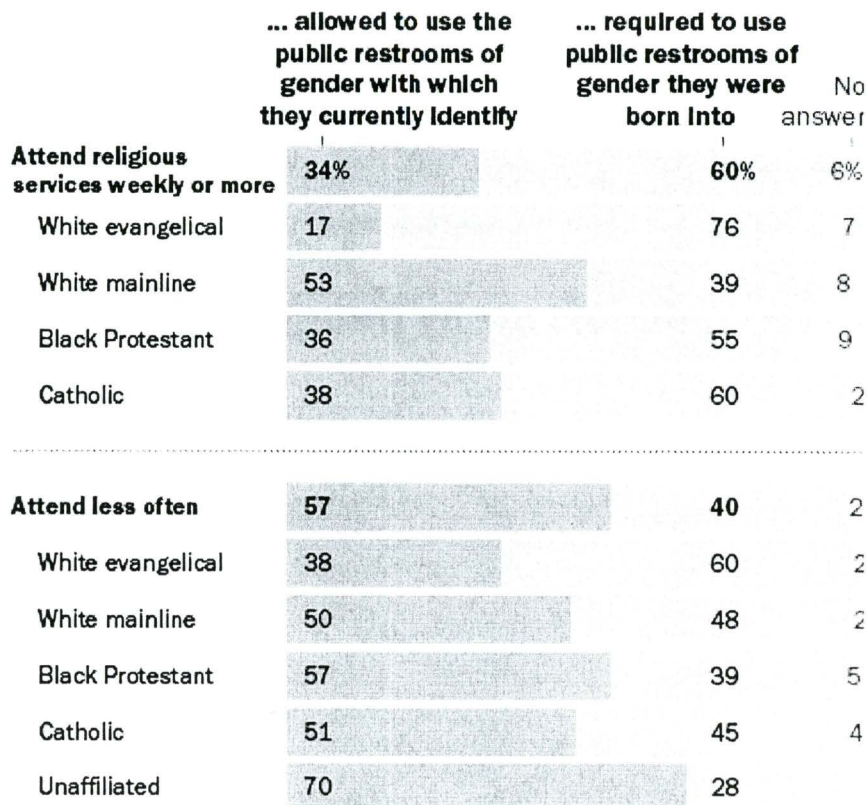
3. Public split over bathroom use by transgender people

6

Six-in-ten regular churchgoers say transgender people should be required to use public restrooms of gender they were born into

If you had to choose, which comes closest to your view?

Transgender people should be ...



Note: Whites and blacks include only those who are not Hispanic. Figures may not add to 100% due to rounding. The survey included too few interviews with Jewish respondents to be able to subdivide them by frequency of religious service attendance.

Source: Survey of U.S. adults conducted Aug. 16-Sept. 12, 2016.

"Where the Public Stands on Religious Liberty vs. Nondiscrimination"

PEW RESEARCH CENTER

(http://www.pewforum.org/2016/09/28/3-public-split-over-bathroom-use-by-transgender-people/pf_16-09-28_religiousliberty_church_transgender420px/) Americans overall are closely divided on the question of which public restrooms transgender individuals should be using. But similar to the other issues addressed in the survey, those who attend religious services on a regular basis lean somewhat more strongly toward the conservative position – in this case, that transgender people should be required to use public restrooms for the gender they were born into. Six-in-ten of those who attend religious services weekly take this stance, while a similar share of those who attend church less frequently say transgender people should be allowed to use the restrooms matching the gender with which they identify.³

Three-quarters of churchgoing white evangelicals (76%) say transgender people should be required to use the restroom of the gender they were born into, along with 60% of Mass-attending Catholics and 55% of black Protestants who attend church regularly. Roughly half of churchgoing white mainline Protestants (53%) take the more liberal position.

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Compared with those who attend religious services at least once a week, those who go less often – especially religious “nones” – are more inclined to say transgender people should be allowed to use the restroom that matches their gender identity. However, six-in-ten white evangelicals who do not attend church regularly still take the opposite view, saying that transgender people should have to use the restroom matching the gender they were assigned at birth.

Most young adults favor allowing transgender people to use restrooms of their current gender identity

If you had to choose, which comes closest to your view?

Transgender people should be ...

	... allowed to use the public restrooms of gender with which they currently identify	... required to use public restrooms of gender they were born into	No answer
Total	51%	46%	3%
Men	45	52	2
Women	55	40	4
White	51	46	3
Black	50	44	6
Hispanic	47	48	5
Ages 18-29	67	32	2
30-49	49	49	
50-64	44	52	4
65+	45	48	7

Note: Whites and blacks include only those who are not Hispanic. Hispanics are of any race. Figures may not add to 100% due to rounding.

Source: Survey of U.S. adults conducted Aug. 16-Sept. 12, 2016.

"Where the Public Stands on Religious Liberty vs. Nondiscrimination"

PEW RESEARCH CENTER

(http://www.pewforum.org/?attachment_id=26503) The survey finds strong indications that the youngest generation of U.S. adults has a different perspective on bathroom use by transgender people. Two-thirds of adults under 30 say transgender people should be free to use restrooms that match their gender identity. Adults in their 30s and 40s are evenly split on this question, while the prevailing opinion among adults over 50 is that transgender adults should use restrooms corresponding to their birth gender.

The survey also shows that women are somewhat more likely than men to say transgender people should be allowed to use the restroom that matches their gender identity.

8

Relatively few Americans say they sympathize with *both* points of view on the question of public bathroom use by transgender people. Instead, most people express sympathy with only one side of this issue, including 32% who say they sympathize “a lot” or “some” only with those who argue that transgender people should have to use the bathroom corresponding to their birth gender, and 30% who sympathize only with the opposite viewpoint (that transgender people should be allowed to use restrooms corresponding to their gender identity). About one-in-five adults (18%) say they sympathize at least “some” with both perspectives, while another 19% express sympathy with *neither* side in the debate.

This pattern is seen among all religious, political and demographic groups analyzed in the survey. Some groups tend to favor one side (e.g., evangelicals tend to sympathize only with the view that transgender people should use the bathrooms matching their birth gender) or the other (e.g., about half of Jews and religious “nones” sympathize only with the view that transgender people should be able to use the restrooms that match their gender identity). But relatively few people in any group express sympathy with both sides in the debate.

And neither side has much claim to tolerance of the opposing point of view. Just 23% of those who generally think transgender people should be able to use the restrooms of their current gender identity also sympathize with the view of those who express the opposite opinion, and just 13% of those who would require transgender people to use the bathrooms of their birth gender sympathize with both sides.

Relatively few sympathize with both sides in debate over use of bathrooms by transgender people

	Sympathize only with view that transgender people should be allowed to use restrooms of gender with which they currently identify	Sympathize a lot/some with BOTH sides	Sympathize only with view that transgender people should be required to use restrooms of birth gender	Sympathize with neither view
	%	%	%	%
Total	30	18	32	19=100
Protestant	19	18	41	22
White evangelical	14	12	52	22
White mainline	28	19	36	17
Black Protestant	21	20	31	28
Catholic	22	23	33	22
Jewish	51	10	30	9
Unaffiliated	52	15	18	15
Attend religious services weekly or more	14	20	44	22
Attend less often	37	17	28	18
Men	26	17	36	20
Women	34	19	28	18
White	33	15	34	18
Black	23	25	26	25
Hispanic	26	26	32	16
Ages 18-29	41	19	21	19
30-49	30	18	35	17
50-64	25	19	35	22
65+	25	17	37	20
Republican/lean Rep.	12	16	49	23
Democrat/lean Dem.	46	20	19	16
<i>Among those who say transgender people should be ...</i>				
Allowed to use public restrooms of gender identity	58	23	4	16
Required to use public restrooms of birth gender	2	13	65	21

Note: Whites and blacks include only non-Hispanics. Hispanics are of any race. Figures may not add to 100% due to rounding.

Source: Survey of U.S. adults conducted Aug. 16-Sept. 12, 2016.

"Where the Public Stands on Religious Liberty vs. Nondiscrimination"

PEW RESEARCH CENTER

Defining 'transgender'

10

My name is Joe Larson and I serve as pastor of St. Mark's Lutheran Church in Fargo, ND. I am also currently the only openly gay, married ELCA pastor in the state of North Dakota.

Even though I am not a native North Dakotan, I currently serve a Lutheran congregation in Fargo that voted to become welcoming towards LGBTQ individuals and their families 26 years ago. I also grew up in Dassel, Minnesota, south of St. Cloud. So, I am at heart a small-town boy. I know how people who live in Midwest rural areas look at issues like the one we are discussing today.

As a gay pastor, I do not expect that some Christians are going to dramatically change their position on gay issues any time soon. But as a pastor and theologian, I believe that it is critical that we as Christians learn to separate our religious beliefs and theological issues from basic legal protections that should be afforded to everyone.

For example, I shouldn't have to worry when I walk into a restaurant if the kitchen will serve me just because I'm dining with my husband of 27 years. Or when we moved here last year, I should not have been concerned about being denied housing in North Dakota because I'm gay. In Fargo, I have spoken to LGBTQ individuals who bought houses in Moorhead, MN for that very reason.

Similarly, if I am applying for a job at a hospital or a local restaurant or the neighborhood store, I should not be denied a job because of the person I love. I should be hired because of my education, my professional skills and my previous work experience. I have known many people who have not disclosed that they were gay, lesbian, bisexual or transgender on the job because of their fears of being treated unfairly or of losing their job because of their gender or sexual orientation.

Regrettably, some Christians have justified unfair treatment or discriminatory policies in the name of Christ. For me, as a lifelong Christian and pastor, this runs completely contrary to the message of the Gospel. Today, our Church is facing a crisis never seen before. Younger Americans are abandoning organized religion. One-third of Millennials say that the church's treatment of gay people is a main reason for that. They find it too difficult to participate in an organization or group of people that is supporting efforts that make life worse for their LGBTQ friends and family members.

If North Dakota wants to continue and retain young, talented professionals to our state, we need to create communities that are inclusive and welcoming to people from all sorts of diverse communities and backgrounds.

Perhaps the saddest thing for me is to hear Christians say things about gay people that simply not fit what Jesus taught and died for. In the Gospels, we read about how Jesus spent his time ministering to those rejected by their faith communities—lepers, tax collectors, prostitutes and foreigners. Some Christians like to talk about ethical issues by asking "What Would Jesus Do?" Well, if you look at the Bible and think about our world today, I believe that Christ would be right here working on behalf of LGBTQ individuals, homeless people, drug addicts, and refugees.

In the Gospels, it says that Jesus began his career as a carpenter. In my wildest imagination, I cannot imagine Jesus as a someone who would refuse to build a table for a couple because they were gay or lesbian. In fact, I'm quite sure that Jesus would not only build that table, he would sit down and share a meal with them, too. And he would invite the rest of us to dine with them.

Today, it's time for those of us who call ourselves Christians to follow Christ's example by looking past the politics and doctrines to see the dignity, humanity and needs of real people. As the prophet Micah once said, "What does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?" (Micah 6:8)

You may ask how Christians, even from non-affirming congregations, can better demonstrate God's love to the LGBTQ community? — By helping to ensure that we have access to a job and a roof over our head. By joining with us to prevent bullying of gay and transgender youth. By treating all people with the same dignity, love and respect that Jesus did.

If Christians can't work to safeguard gay, lesbian and transgender people from bullying, physical attacks and other forms of discrimination, I'm afraid we've traded the true gospel of Jesus for a form of Christianity that is devoid of grace and compassion, at a time when the world is desperately in need of both. I urge all people of faith here in North Dakota to support this bill to protect against employment and housing discrimination for LGBTQ individuals and their families. I am Joe and I am HB 1386.

A.H. 6
HB 1386
2-1-17

In the early part of 2015 my congregation, Trinity Lutheran Church of Bismarck, held a series of round table discussions about the blessing of same gendered relationships. At that point gay marriage had not yet been made legal by the US Supreme Court. Thus our question simply had to do with whether or not our church was willing to perform a wedding ceremony for a same-gendered couple who had made such a request. In the end, and actually much to my surprise, the congregation voted to allow same gender ceremonies.

But what most inspired me about these round table discussions wasn't the overall viewpoint of various people on the question of gay marriage. What struck me was that among both opponents and supporters of gay marriage, there was this consensus that they wanted to make sure that our community was a place where LGBT persons felt loved and respected. That was the most important thing, even if there was some disagreement. Because of course it is possible and even *crucial* to show love, goodwill, and respect to people even when we disagree with them.

Members of the State legislature, I come here today to speak in support of House Bill 1386, which would add sexual orientation to our State's anti-discrimination legislation.

I'd like to begin by pointing out that this Bill is not a debate about whether or not you think being gay is moral, or whether you support gay marriage. It's a debate about whether or not its okay to discriminate (i.e. harm or treat unfairly) people of the LGBT community.

By way of illustration... I don't enjoy the music of Barry Manilow. But I do want Barry Manilow fans to be treated with fairness and respect, because it's a matter human dignity that *everyone* deserves fairness and respect. In the same way, whether or not you approve of same gendered relationships, we should all agree that we want to protect people of the LGBT community from being discriminated against, because again- it's a matter human dignity.

Some have said that protecting against discrimination on the basis of sexual orientation is unnecessary because such discrimination isn't happening- not in good ole North Dakota. Two things on that...

Firstly: In my religious tradition (and in most Christian traditions) we begin our faith with two assumptions. One is that God is good. The other is that humans are sinful. This means that even in North Dakota where there's lots of good people, there are sometimes going to be people who do the wrong thing. And there are going to be people who want to discriminate based on sexual orientation.

Secondly, in regards to whether this anti-discrimination legislation is really necessary... you know when people have more experience in something than you, you listen to them. When teenagers in my church want to tell me about how to use an app on my phone, I listen to them. Because teens know about apps. Well we are being told by members of the LGBT community in ND that they experience discrimination. We should believe them and we should act to protect them against such discrimination.

In conclusion, it does no harm to be extra diligent in prohibiting discrimination against LGBT persons. Failing to pass this legislation, however, could do great harm in the realm of discrimination. And also, it would send the message that this body really doesn't bear goodwill towards the LGBT community. Therefore I encourage you to support respect, love, and human dignity by passing HB 1384.

Blessings to you all and thank you for your time.

Att. 7
HB 1386
2-1-17

February 1, 2017

To: Human Service Committee

Dear Chairman Weisz and Members of the Human Service Committee:

Good morning. For the record my name is Christine Kujawa. I'm a lifelong resident of North Dakota, and currently reside in Bismarck. I am here in my capacity as a member of the Unitarian Universalist Fellowship and Church of Bismarck-Mandan Board of Trustees.

Our Board of Trustees unanimously supports HB 1386 and the addition of the phrase "sexual orientation" to the state's policy against discrimination.

This addition is line with our church's principles, namely our covenant to affirm and promote the "inherent worth and dignity of every person," as well as insuring "justice, equity, and compassion in human relations."

While we would all like to think that people know that it is not right to discriminate against others, it is unfortunately the case that there are always "bad apples" in the bunch. This is why it is so important to have anti-discrimination policies, such as the State of ND currently has. However, one phrase is missing. We wholeheartedly support the addition of the phrase "sexual orientation" to the State's policy on discrimination. We hope you do, too, and urge you vote in favor of HB 1386.

Thank you for your time and consideration.

Christine Kujawa, Trustee
Unitarian Universalist Fellowship and Church of Bismarck-Mandan
Board of Trustees

A.H. 8
HB 1386
2.1.17

Testimony on HB 1386

Cody Schuler, Legislative Coordinator, North Dakota Coalition for Homeless People
February 1, 2017, 9:00 AM, Brynihil Haugland Room
House Human Services Committee, Representative Robin Weisz, Chairman

Mr. Chairman, members of the Committee, my name is Cody Schuler and on behalf the North Dakota Coalition for Homeless People I speak today in favor of House Bill 1386.

Every day across our state, people experiencing homelessness are working towards stable housing and improving their lives. While the causes of homelessness can range from trauma such as job loss, domestic violence, and addiction issues, to disabilities and health challenges, the only solution to homelessness is housing. Individuals and families experiencing homelessness often face significant barriers when seeking housing. Discrimination in housing based on sexual orientation or gender identity should not be one of them and is an unnecessary obstacle in the work being done to prevent, reduce, and end homelessness in North Dakota.

When it comes to employment, homelessness itself and related issues such as physical or mental health can be significant barriers alone. Yet, a stable income is often a critical part of housing solutions. Workplace discrimination based on sexual orientation or gender identity place an already vulnerable population at further risk of not being able to escape poverty and homelessness.

According to the National Alliance to End Homelessness, the population of homeless youth who are LGBTQ is disproportionately higher compared to LGBTQ youth in the general population (20% to 10% respectively). Because cases of chronic adult homelessness are often linked to instances of homelessness first experienced as youth, protection against discrimination could play a critical role in breaking cycles of homelessness and thus being an important part of reducing and ending homelessness in our state in the long term.

Last year, 88 persons experiencing homelessness and receiving services in North Dakota identified as lesbian, gay, bisexual, transgender, or questioning their sexuality. This number does not take into account those individuals, particularly youth, who may not have sought out shelter or other services. Furthermore, we don't know how many others may have not disclosed their sexual orientation or gender identity for fear of discrimination in seeking housing or other services because of the lack of legal protection.

It is on behalf of those 88 people, and all those who may not have been counted, and on behalf of the dedicated homeless service providers across North Dakota, that I urge this committee to give House Bill 1386 a "Do Pass" as it advances to the full House chamber. Passing this bill would be a significant step forward in ensuring all people in our state would have the opportunity to have a safe and decent place to call home.

TESTIMONY ON HB 1386

<< REGARDING DISCRIMINATION ON BASIS OF SEXUAL ORIENTATION >>

A# #9
HB 1386
2-1-17

Chairman Weisz and members of the Committee – Good morning. My name is Carel Two-Eagle.

I stand in support of HB 1386. I am a spiritual guide of my People. I Walk with a Holy Pipe – a Ch’annunpa. Every Pipe’s focus is different, but the prayer that focuses this Pipe is to heal the Sacred Hoop. I am the lead Dancer; you are all supposed to join in. HB 1386 helps with that healing.

Because I Keep a Ch’annunpa, I seldom take up with a man. I am too busy. But I have been asked by 4 Committee Chairs if I am gay because I am single. I tell them, “No, I’m not gay. Many days, I’m not even particularly happy. Such as when I am asked questions like “am I gay”. I’ve told them there *is* a third choice – picky. Because I Walk with a Pipe, I have standards to keep. I can’t take up with just anyone. Not that it matters.

I have adopted 40 kids. Two of them are gay. One of them told a man one day, “Being gay isn’t a choice! It’s the way you’re *born*.” I’ve always known that, because that is what Lakota Traditional Ways teach, but it hit home more when s/he said it. Whether a person is ‘gay’ or ‘straight’ is due to the kind of soul wired into their body. If a same gender soul is wired into a body, that person is ‘straight’. If a female soul is wired into a male body, or a male soul into a female body, that person is gay. Traditionally, Indigenous spiritualities all teach that gays are a bridge between the two halves of the straight world. They are spiritually special, and they see the world differently.

On those rare occasions when I do go out with a man, my favorite dates are gay men. Why? Because they keep their hands to themselves. And should I go out with a woman, that hardly makes either of us gay. Going out does not automatically include going to bed.

I head a non-denominational non-sectarian Church. We worship by helping others. We see a nearly-constant stream of people needing help with discrimination cases. I have been told by ND Department of Labor “investigators”, on two different occasions, “We must side with the employer because they are the employer! That’s what they taught us when they trained us.”

Whether a person is gay or straight makes no more difference than their hair or eye color. It is simply how they are.

To not pass this bill tells the world that, officially, North Dakota does not care. Please vote Do Pass on this bill. I’ll stand for any questions. Thank you for hearing me in a good way now. Mitakuye oiasinh/ All (are) my relatives. Regardless of gender- or romantic-orientation.

AH. 10
HB 1386
2-1-17

Members of the Health and Human Services Committee,

My name is Willow Hall, and I am from district 34 in Mandan. I am a mother to 3 children.

I am here today to respectfully ask for a "do pass" recommendation on HB1386. ,

In North Dakota we have sent a very loud and clear message to our friends, family and neighbors of the LGBT+ community that their rights are not valued here. I am deeply disappointed and sickened watching this happen session after session as a North Dakotan, and as a sister, friend and neighbor to those it personally affects. I get to hear the hurt, and anger when our state's legislature decides once again, that they don't deserve recognition or protection from discrimination in our state.

Please work with us today to start righting this wrong by passing Hb1386, and codifying that discriminating against our family and neighbors based on their orientation isn't a value that we hold in North Dakota.

Thank you for your time and careful consideration of the North Dakota we are forming to leave our children, including mine.

Att. !!
HB 1386
2-1-17

Vallie Needham

HB 1386

I recommend a "Do Pass"

Good Morning!

My name is Vallie Needham and I live here in Bismarck. I am honored and excited to be with you this morning! HB 1386 is important and personal to me because I am a bisexual woman. I am able to testify today because I am fairly positive I will not receive professional backlash from this testimony from my place of employment, and also because on July 2nd of 2015 I married the love of my life, who happens to be a man. This allows me to keep my sexuality hidden whenever I need to. Unfortunately, there are still many times when I hide part of who I am because I don't feel safe.

I am here today to ask you to listen to us. Please listen to those of us in this state who do not feel welcomed or safe simply because of who we are. Please protect us in our places of employment and in the housing industry so we can continue to be productive throughout our communities without the threat of losing what we need to survive. I urge you to recommend a "do pass" on this bill.

Thank you!

AH.12
HB 1386
2-1-17

1 HOUSE HUMAN SERVICES COMMITTEE, WEDNESDAY, FEBRUARY 1, 2017

2 HOUSE BILL 1386: Relating to prohibition of discrimination on the basis of sexual orientation

3 Please include with the Committee Hearing testimony journal for public record

4 Chair Robin Weisz, Vice Chair Karen M. Rohr, Members of the 2017 House Human Services
5 Committee, and fellow citizens of North Dakota, Greetings. My name is Kevin R. Tengesdal, and as a
6 citizen of North Dakota, I resolutely request a unanimous DO PASS on House Bill 1386 as presented.

7 I am a veteran of the United States Navy. I am a 1997 graduate of Columbia International
8 University in South Carolina, with Bachelor degrees in Biblical Studies and in Biblical Languages.
9 Currently, since 2003, I am a graphic designer with The Printers, Inc. here in Bismarck. It is an
10 incredible work environment with impressive respect among us colleagues. In addition, I am
11 involved with local cultural arts as a community theatre actor and supporter. In 2015, the North
12 Dakota Human Rights Coalition elected me as a volunteer board member. This past summer, with
13 the North Dakota Democratic-NPL, I served as an elected At-Large State Delegate to the 2016
14 Democratic National Convention in Philadelphia, representing the LGBT Caucus of North Dakota.

15 Since 2009, we the LGBT citizens of North Dakota, and our advocates, have been legislatively
16 seeking fair labor and housing protections. Here are several statements on public record in
17 testimony journals from previous hearings regarding this topic. The Family Policy Alliance of North
18 Dakota has stated the government should not provide special status, special privilege for some at
19 the expense of freedom for all. The Alliance Defending Freedom determined this bill would trample
20 every North Dakotan's fundamental freedoms. A Christian photographer has alluded to an assumed
21 situation of this law forcing him to film pornography. The North Dakota Catholic Conference has
22 stated civil rights categories should not protect a particular group's sexual activities.

23 We are more than our sexual activities, not pornography, and we are not trampling freedoms.

24 Some further contention with this legislation is the view being LGBT is a lifestyle choice or
25 behavior not needing protections. The resistance with this bill neglects to inform us that both a
26 chosen marital status and a religious lifestyle choice, which you are required to self-identify, are
27 themselves protected classes. None have explained how denying employment, housing, or public
28 accommodations against another human benefits North Dakota economically or ethically.

29 As well, at each hearing is a counterclaim for official recorded cases of discriminations. Why are
30 LGBT citizens apprehensive in disclosing their cases of discrimination? Simply put -- fear.

31 Here is my history of similar learned apprehensions. In 1986, I had dropped out of college to start
32 a career with the Navy. Early in 1988, I was on leave back here in North Dakota. On a cold, dark
33 night, a male aggressor sexually assaulted me, and I landed in an ER in Minot. Despite my insistent
34 misgivings, the doctor convinced me to file a report with the Minot Police Department. They stated
35 they would not report the case to the Navy, but they did.

36 When I returned to my ship in San Diego, the Chaplain called me to his office. He informed me the
37 Minot Police Department had contacted our ship's Captain with the report. He also asked if I was a
38 homosexual, a fact I was now unable to deny. The Navy directly chose to immediately discharge me
39 for being gay, as this was before the "Don't Ask, Don't Tell" policy. First, they placed me in the psych
40 ward for two weeks, to determine my mental condition. After that uncertain period, I signed my
41 discharge paperwork. Two grim, military police unceremoniously escorted me off the base, as a
42 rebranded civilian. I had anticipated a life of serving our great country. Through the years after the
43 discharge, I learned to deceive, and stay in the closet. If one asked about the Navy, I would carefully
44 state the Navy discharged me because of a controversial situation.

45 I forced myself to move on, and create a new life. It was time to perfect my Christian walk with
46 God. As a virtuous man with strong convictions, I purposefully ignored the events, and tucked the
47 memories into the dark recesses of my mind. Years later while in Bible College, I had begun the

1 application process with Wycliffe Bible Translators to serve as a missionary. However, from my
2 Navy discharge paperwork, they knew I was gay, and terminated the application. Upon graduating
3 from college, I had no known career path. My contrived reasoning for not joining Wycliffe Bible
4 Translators was due to the student loan debt.

5 For many years from deep-seated shame, I tried to keep all these details a secret. At times, I
6 wanted people to know, and yet always wanting acceptance. As an actor, I am able to craft different
7 masks to hide the internal torment from others.

8 When I returned to North Dakota in 1998, I knew I should purpose to keep my "secret" close to
9 myself, by trusting only a few. What would an employer, or a landlord do, if they found out I was
10 gay? The years saw periods of depression, much self-medicating with alcohol, rounds of cutting, and
11 several attempts to kill myself.

12 In 2004, with the definition of marriage amendment before North Dakota voters, I knew I could no
13 longer remain silent. I chose to speak out by writing a letter to the editor titled "Where's the threat?"
14 The concluding statement of this letter voiced the words, "As a Bible-believing, born-again Christian
15 who is gay..." Now I was fully out of the closet, not sure what would come my way. Gratefully, life has
16 been favorable for the most part.

17 This past year, I have been in PTSD recovery treatments for the sexual assault, the years of self-
18 imposed homophobia, and other trauma. Through courage gained from the therapy, I have
19 discovered I can stand up for current and future generations of LGBT citizens here in North Dakota.
20 It is my strong dream they will live their life authentically in North Dakota, without fear of
21 repercussions for being gay, free of shame, and welcome in their home state.

22 Do we want North Dakota to remain a state where our citizens condition themselves to lie about
23 who they are? Do we want North Dakota known as a state that chooses to terminate employment,
24 issue eviction notices, deny public accommodations or credit to our citizens, just for being gay?
25 People do make a choice whether or not to leave North Dakota, or even locate here, based upon fair
26 labor and housing practices for LGBT citizens. Can we afford the economic impact of young, skilled
27 workers choosing to leave our state, as they do not have legal protections, and feel shunned? Do we
28 want to impede the forward progress of North Dakota by continuing this harmful bias?

29 We, your LGBT friends and family, are not seeking special status or privilege. Discrimination itself
30 is a self-identifying choice; one's sexual orientation is not. We are seeking the same respect, dignity,
31 and legal protections afforded to the people of North Dakota. I implore you as you consider this
32 legislation: remind yourself to treat your neighbor, as you want your neighbor to treat you. Do not
33 decide LGBT persons should remain second-class citizens undeserving of legal protections.

34 It is my anticipation you, and the members of the 2017 North Dakota Legislative Assembly, will
35 choose to stand on the honorable side of history. We are a state that prides itself on a strong work
36 ethic and supporting our families, youth and community. We must unconditionally pass this
37 legislation, now, and without amendment.

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

42 Thank you for your time and your consideration.

43 Kevin R. Tengesdal, District 35
44 2025 North 16th Street, Apt 4; Bismarck, North Dakota 58501
45 brander_chatfield@yahoo.com; 701/527-0737

OH. 13
HB1386
2-1-17

My name is Nicole Schumaker, I'm from district 30 in Bismarck. I'm a mother, and a veteran spouse.

I am here today to respectfully ask for a "do pass" recommendation on HB1386.

In the eight and a half years that I supported my husband in the US Navy, I watched as Don't Ask, Don't Tell was repealed. I watched these men and women who had become our family sigh with relief. I watched these heroes cry with their acceptance. They were always loved, always part of the team, but they were finally safe from losing their job, the job of protecting their country, over their sexuality. I watched these men and women come home from deployment and meet their spouses on the pier and share that homecoming first kiss. Which is the best feeling in the world when you're a military spouse. I watched as these families moved onto base, and showed up at command functions, and started raising their families. I watched how something they struggled for years to achieve, was so nonchalant. How, if anything, it actually strengthened our commands, and our bonds. How these heroes, who were risking it all, finally felt truly accepted.

Please consider passing that protection and safety on to our LGBT friends and family in North Dakota. My husband is proud of his service, as am I. But we are incredibly sad that moving back to North Dakota means losing that protection. Our military heroes fight for us everyday, we owe it to our state to have those rights upheld here.

Thank you for your time and consideration.

HB 1386
Att. 14
2-1-17

Chairman and Committee Members,

Thank you for your time this morning. I am Rev. Gretchen Deeg and a local church pastor in Bismarck. I am in support of a "Do Pass" recommendation for HB1386.

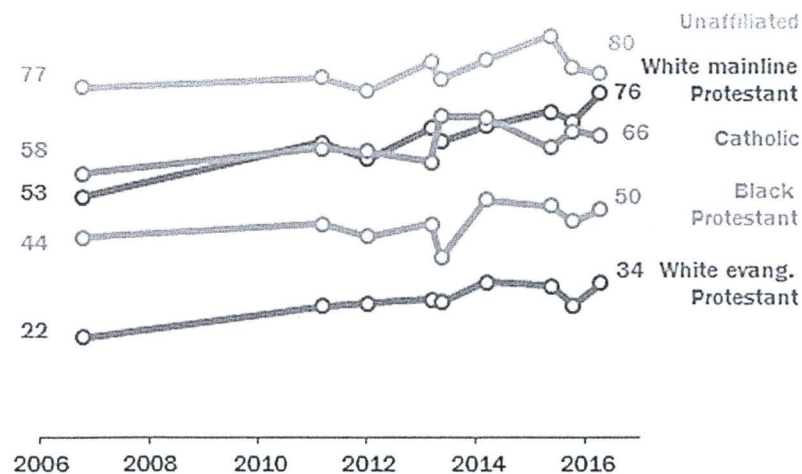
Although I am a preacher, I will not preach to you as the State Capitol is not the place for individual religious beliefs to be forced upon others. However, I wish to share with you some brief facts about your religious constituents. About 80% of North Dakotans claim religious affiliation. A majority of religious North Dakotans are accepting of LGBT. In my written statement, I have included a graph from a 2016 survey done by the Pew Research Center with details of which denominations within Christianity most widely believe homosexuality should be accepted by society. In that graph you will see that a majority of Mainline Protestants and Catholics, which are the dominant religious groups in North Dakota, believe homosexuality should be accepted. I understand that some of you may think your constituents will not support you if you were to support HB1386. The data speaks otherwise. Ten years ago, a slight majority of Christians would have backed you in supporting HB1386. Today, an even larger majority will support you when you recommend a "Do Pass" on HB1386.

Thank you for your time.

Rev. Gretchen Deeg
917 N 5th St
Bismarck, ND 58501
701-347-1235 cell

Changing views among religious groups on whether homosexuality should be accepted

% who say homosexuality should be accepted by society



Note: Whites and blacks include only those who are not Hispanic.
Source: Survey conducted April 12-19, 2016.

PEW RESEARCH CENTER

¹ <http://www.pewresearch.org/fact-tank/2016/05/12/support-steady-for-same-sex-marriage-and-acceptance-of-homosexuality/>

HB 1386
AH. 15
2-1-17
Brad
Aune

I am North Dakota. I have been a resident of ND my entire life, 3rd generation.

Grew up on a farm in rural ND, High School State Football Champion, All State Middle Linebacker.

Went off to the Marines, served as an infantryman in a Marine Expeditionary Unit, Special Operation Capable. I was part of Operation Earnest Will, Escorting Oil tankers in the Persian Gulf. Honorably Discharged in 1989.

Returned home to ND, used my GI Bill to achieve my Bachelor's degree at one of your ND universities.

While in college I joined the ND Army National Guard, Served 18 years, I taught at the Regional Training Center in Devils Lake for 3 years.

I was deployed to Operation Iraqi Freedom from 2004 to 2005. Lead a unit of ND Soldiers as the Unit First Sergeant. I was awarded the Bronze Star Medal for my leadership in Iraq.

I have the North Dakota Flag that our unit flew at our command post in Iraq hanging on my Garage wall.

Honorably Discharged from the Army.

Retired in 2007, 22 years of service to the State and Nation.

24 yrs
volunteer
in private

I work with Veterans. I was awarded the State Service award by the ND American Legion in 2010.

I was the State and National recipient of the Veterans Service Award for the Disabled American Veterans in 2015.

I am a past commander of the Fargo American Legion.

~~This last weekend I was awarded the State service award by the ND American Legion for 2016 and nominated for their National Award.~~

My daughter is training today for a deployment to the pipeline as a member of the ND Army as a

①

Last Summer I presented at the National Association of Workforce Professionals in Washington DC, on Working with Veterans that have PTSD.

I am a Veterans representative to the Patient Center~~e~~ Care committee at the VA Hospital.

I have represented ND very well at the State and National level. I have done everything that my State has asked of me. All I want is my State to support me by passing this legislation.

I was told 3 years ago that I could express my gender in the work place then 6 months later I was told that I was in violation of the dress code. I had no recourse legally. I was assured by my agency that I was protected, then told that if I were to show up to work expressing myself that I would be sent home for violation the dress code. They told me that I would not be fired for being transgender but I am not allowed to express my gender in the work place. I work for the State, I work under a federally funded program that does not allow me to discriminate against my LGBT veteran clients, I would be in big trouble if I did, but I am not allowed to express myself or I will be fired for dress code violation. This makes no sense to me.

I am so tired for fighting for my freedoms. It's time that the ND legislature shows as much courage as I have and vote to protect LGBT Veterans, service members and all LGBT citizens of ND. That is what I fought for and I think that you should as well.

I expect if you say that you support Military and Veterans that you will vote for a DO Pass on HB 1386. We you make campaign speeches, every one of you stated that you support veterans well this is an easy way to confirm that promises. I am a Veteran and I am asking for your support.

Att. 16
HB 1386
2-1-17

Mr. Chairman and members of the committee, my name is Jen Dunn and I'm from Bismarck. I've also lived in Edgely and Linton, ND. I'm currently in graduate school in Bismarck and my wife and I have lived in North Dakota all of our lives. I am speaking to you in favor of HB 1386.

Some would like to say that discrimination based on sexual orientation doesn't exist in ND.

If discrimination didn't exist, I wouldn't have asked a religious leader to pray my gay away. If discrimination didn't exist, I wouldn't have asked a religious leader to pray the best thing I have to give – my love – away.

If discrimination didn't exist, my wife and I wouldn't have been told to not bother calling a certain Bismarck reception hall to host our wedding celebration; a lesbian friend had already been denied the celebration of her same-sex marriage there.

If discrimination didn't exist, I would not have had to terminate my undergraduate internship early due to a hostile work environment directly related to my sexual orientation.

If discrimination didn't exist, lesbian, gay, bisexual and transgender (LGBT) youth wouldn't attempt suicide 3X more often than general youth.¹

LGBT youth wouldn't account for 20-40% of homeless youth across the country. A disproportionate number when you consider that queer people account for 3-10% of the general population. That is to say, at best gay youth are 2X more likely and at worst 13X more likely to be homeless than their heterosexual counterparts.²⁻⁴

According to the author of the Congressional Research Service report that declared those devastating numbers, "Gay and lesbian youth appear to be overrepresented in the homeless population, due often to experiencing negative reactions from their parents when they come out about their sexuality."³

Finally, if discrimination didn't exist, there would be no need for the proverbial closet in the first place.

And if there were no "closet" everybody, and I mean everybody, in this room would know more LGBT people than they do now because nobody would be hiding.

Exactly what are we discriminating against? Let me tell you a story about my wife: Before we got married, I spent a year in South America as a missionary. The transition was difficult. I went there alone and possessed just enough Spanish to get my basic needs met. I had no family there. I had no friends. I lacked any sense of deep, meaningful connection with any of the people with whom I interacted. It was a practice in solitude. Sad solitude. My wife – then girlfriend – was the one who answered my tearful Skype calls at 4:00 a.m. when she had to be in class at 8:00. She is the one who showed me the love and compassion that I was starving for. She was my one constant, my rock, my pillar of hope in the year that I was away.

My wife and I are a team. We support each other in our endeavors and dreams. Our relationship embodies the respect, fidelity, and support that North Dakota law outlines as

mutual obligations between two married partners. Yet ND law determines that we must risk hostile work environments, work termination, and eviction based on the love we share? To be clear, this bill is not a plea to be married in religious institutions that hold deeply rooted conviction against our relationship. This is a plea for equal, not better than but equal, treatment in work and housing.

Now, my wife is an educator and the coordinator of a local after-school program. She spends countless hours outside of work – unpaid – working on the curriculum to provide the best opportunities for her students. She has solicited business donations to reward students for exemplary behavior. Last summer, she ensured that at least one speaker came to her school every week – covering topics from Native American dance to bike safety – to engage the students and provide diversity from the traditional school set-up. Her site was the only one to achieve that. Soon, I will hold my doctorate in physical therapy, a needed skill in this area. There is a greater need for physical therapists than there are therapists to fill those positions. This is particularly true of rural areas, of which North Dakota has many. Is the fact that we are two wives instead of husband and wife so unpalatable that all the skills and service we can provide to a workplace are negated?

Ambiguity has no place in ND law. The longer ND takes to pass anti-discrimination legislation, the longer gay people will flee the state in search of more amicable conditions. The longer employees with a strong work ethic, talent, and entrepreneurial prowess will be lost to more accepting states.

I urge a simple “do pass” recommendation in favor of HB 1386. Thank you.

Jennifer Dunn
District 30

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2:00
approx.

A.H. 17
H.B. 1386
2-1-17

Testimony

Human Services Committee

House Bill 1386

Wednesday, February 1, 2017; 9:00am

North Dakota Department of Health

Good Morning Mister Chairman and members of the Committee. My name is Allen Irish and I am a Licensed Associate Professional Counselor working at North Dakota State University. I am here today to testify on behalf of myself and the many other gay, lesbian, bi-sexual, transsexual, queer and questioning persons that live within our great state. I am here in support of House Bill #1386.

Richard Nixon stated, "Always give your best. Never get discouraged. Never be petty. Always remember: Others may hate you. But those who hate you don't win, unless you hate them. And then, you destroy yourself."

Having grown up in North Dakota I have seen the love, dedication, and the hard work ethic that this state installs into its people. The beneficial aspects of our communities and people of this state are astounding. And yet, growing up here as a young gay man I have also witnessed the lack of compassion towards people who are different.... Or even those who are perceived as different.

I stand in front of you today asking you to think about the positive implications that passing this bill would have. For the first time, North Dakota would be a state that would not allow prejudice and privilege to undermine another person's rights to equality. How wonderful

would it be for us, and as a state, to say that we treat all individuals equal when it comes to finding a job or a place to call home?

It is my assumption that there will be people trying to tell you that this bill goes against their First amendment rights. That they do not see how the government can force someone to do something that goes against their religious beliefs. But in reality, Bill 1386 does not take away another person's rights, it only grants all people in this state the equal opportunity to housing and employment. Our beloved and sacred First Amendment states "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

Now, I understand how religious views can play into many situations associated with LGBTQ people; religion is something that has been use against me in my life even though I identify as a Christian. And yet Bill 1386 does not limit or deny anyone their ability to practice their religious beliefs. Bill 1386 in no way reduces the freedom of speech, or press, or assembly nor does it deny anyone the ability to petition a complaint to governmental officials. What you are faced with today ladies and gentlemen is simply a bill that allows all of the residents of this great state the chance to fair and just employment and housing.

Bill 1386 does not stop hate, it does not stop prejudice, it does not stop someone from practicing their religious beliefs. This is what Bill 1386 does; it allows all people, the right to obtain housing and provides security that all people including gay, lesbian, bisexual, transgender, queer/questioning individuals cannot be fired as a result of an employer's own prejudices.

Six years ago the sixty-second legislative assembly of North Dakota passed House Bill No 1465. Bill 1465 was introduced as an anti-bully bill in public schools. This bill was created due to the harmful effects that bullying has on its victims. In my own experience, students who are bullied have less passion for learning, have a decreased self-esteem, and are more prone to depressive symptoms. Bill 1465 was passed in the House by a vote of 76 to 18 and in the Senate by a vote of 36 to 10! The passing of bill 1465 was a clear and evident statement to our youth that we as a state care about you and want to protect you from the negative actions of others.

The moment those students in any public school graduate and by all legal terms become an adult at 18, the sad reality is that for some of them they are no longer protected from the bullies that threatened them in high school. The bullies have once again won. And as a state by voting against Bill 1386 you are allowing those bullies to continue to harm others. By voting against Bill 1386 you are saying to every lesbian, gay, bisexual, transgender, queer, or questioning student in high school that once they become an adult you are ok with them being bullied again. By voting against this bill you are telling our youth that they only matter when they are considered a child; that when they become an adult they must suffer the possibility of being denied or even evicted from their apartment because of their sexual orientation or that they must just live with the consequences of being fired because they are a fag in the eye of their employer.

I want to thank you all for your time and for allowing me to express my support and the reasons why I support Bill 1386, because I am #1386. But before I step down from this podium I would like each of you to do one thing for me. I have educated myself on each one of your biographies and there is one thing that each and everyone one of you have in common. Each of you have at least one child.

I would like you to think about your children right now and if you have them, think of your grandchildren. Picture their faces, their smiles, hear their laughs, remember a time when they accomplished something that made you proud. Now picture their face again. But this time their smile is gone, tears have appeared, hear their muffled cries as they tell you "Mom.... Dad.... I was fired from my job today because I love another man..... because I love another woman..... I was fired from my job because I am not straight. Please don't be upset with me"

President John F Kennedy stated, "Let us not seek the Republican answer or the Democratic answer, but the right answer. Let us not seek to fix the blame for the past. Let us accept our own responsibility for the future.

My name is Allen Irish, I am a lifelong resident of this state and I am gay..... I am Bill #1386. And I ask you to support me..... and to support and pass this bill (#1386).

Thank you,

Allen James Irish

Att. 18
HB 1386
2-1-17

Mr. Chairman and members of the committee, my name is Cinque Anderson and I'm a straight male from Michigan. I'm currently in graduate school in Bismarck and I have been living here for a little over a year. I am speaking to you in favor of HB 1386.

Since I have been living here in Bismarck, it hurts my heart knowing how my fellow friends of the LGBTQ community are being treated. It hurts my heart knowing my friends have to hide who they truly want to be. It hurts my heart knowing my friends have to live in a place where they are not valued as equal members of society. It hurts my heart knowing they are being harshly judged based off how they define themselves. It hurts my heart knowing North Dakota doesn't value basic human rights. It hurts my heart knowing that my friends are not being loved. It hurts my heart knowing my friends cant truly be happy living here. If my friends are unhappy then I am unhappy. If my friends are hurting then I am hurting too. Things need to change because I am tired of feeling their sadness and pain. If things don't change soon, then North Dakota is a place that I never want to come back to. Love is love and love is happiness and that's something you should never take away from people.

I urge a "do pass" recommendation in favor of HB 1386.

Cinque Anderson
District 32

A.H. 19
HB HB 1386
2-1-17

Chairman Weisz, Vice Chairperson Roth and other committee members. My name is Casey Buchmann and I live in Washburn, ND

First off, I'd like to thank the people who wrote our states constitution. Whose foresight, knowledge and wisdom allows the electors, in an open forum hearing, to give testimony either for or against bill as they travel through the legislative process. Ensuring that the electors voices be heard. And hold the elected accountable for their voting records while in office.

HB1386, amends and reenacts several sections in the ND Century Code by adding sexual orientation. An amendment long overdue and denied several times by the supermajority in our state legislature.

I stand before you as a husband, a father and a grandfather. A father of a 15 year old daughter and a 28 year son. I have always taught my children that everybody is the same. No matter their ethnic origin, religious beliefs and sexual orientation. I also have taught my children not to judge or hate people in this same manner. These same thoughts, ideals and actions were instilled in me by my mother.

Sadly, and far to often in our state, laws that are design to protect people under federal jurisdictions are either ignored or worse yet. Declared null and void based on a certain political party's ideals on States Rights and/or that we are a nation based solely on Christian beliefs.

The 14th Amendment Section 1 states:

All persons born or nationalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the state where in they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sadly and factually. Our supermajority in our legislature, based on personal, religious and party ideals have failed to ^{as here} ~~anger~~ to the constitution of the United States.

What one person says about he or she's sexual orientation is ^{none} of our business. Yet, many in our state legislature continue to judge people in that way. That's discrimination. Furthermore upon realization that federal law supersedes state law. They fail to add such wording to amend our state constitution. To me that's a cop out and a failure of accountability to the electors of our great state

So, I urge you to vote a DO PASS on HB1386

Casey Buchmann

att. 20
HB 1386
2-2-17

**Testimony for 2017 House Bill 1386
House Human Services Committee
Presented by Waylon Hedegaard
President of the North Dakota AFL-CIO
February 1st.**

Mr. Chairman, Members of the Committee:

My name is Waylon Hedegaard, and I'm the President of the North Dakota AFL-CIO.

I've thought about this bill a great deal. I could talk about it from the point of Labor and jobs, and there is much I could say. I could talk about the need to diversify our economy. I'm on the Governor's Workforce Development Council and bringing more high tech industries to North Dakota is a topic that is repeatedly brought up. I could talk about how hard it's going to be to diversify our economy if we don't tolerate the diversity in the educated workforce that these jobs will need to attract.

It will be very hard to bring these industries here if we are seen as intolerant of our LGBT citizens much as North Carolina has experienced.

But after dwelling on this bill for the last few days I feel I need to testify as Waylon Hedegaard, citizen of North Dakota who's just trying to do the right thing.

I grew up in a very conservative, Christian family. Gays and lesbians were looked down on with disgust as if they were evil or inhuman. It's likely what my parents were taught. It's what I was taught, and I really never thought about it any other way.

One day my parents had neighbors over for a visit. They were Democrats. Liberals even. Who knew what crazy thing they'd come up with? Well, we were sitting in our living room talking and the topic of homosexuality came up. An argument broke out over what should be done about it. The neighbors being of a more live and let live mindset, didn't think it was a big deal and they should be left alone, and my family thought their very existence was wrong. As the argument got heated, one of the neighbors turned to us and asked, "Well, what do you think should be done?"

And I, trying to be stupidly funny like only a 14-year-old boy can be, made a gunshot sound.

And people laughed. I was 14 years old, and I joked about killing people for just being who they are, and people laughed. That memory remains crystal clear to me decades later. I still feel to this day that there was a fork in the road there, and for a while, I took the wrong path.

I was a stupid kid who thought he was being funny, but a big part of me knew it was wrong then just like I know it's wrong now. But it certainly didn't stop there. I continued to defend my hatred by using my faith. I continued to use slurs and speak against the LGBT community right up until I actually met them as living and breathing people. Like so many other bigotries, my hatred began to dissolve in the light of actual knowledge and friendship. I began to realize that it wasn't they who were wrong, it was me.

That is not easy for me to admit even now because personify the old Scottish proverb, "Lord make me right the first time for I am hard to turn."

It has taken me much of the last 35 years to dig those little nuggets of hatred out of my soul, and they're not all out yet. I think it safe to say that I'm still a work in progress.

So when we had a son, my wife and I tried our best to raise him without that anger and hate. Time will tell how well we did.

So why do I support HB 1386? It's simple. It's because I want my grandchildren and all children to grow up in a better world than I did. I want them to grow up in a world where they judge others by the good they do, not who they love or who they are born as.

For this, I ask this committee to vote yes on HB 1386. North Dakota and the nation are changing. I ask that we adjust to this change. It is my fear that we are going to be like Mississippi in 1964. By holding on to the past, we will risk being left behind by the future.

Thank you for hearing me, and I would stand for any questions.

A.H. 21
HB 1386
2-1-17

HB 1386

Testimony of Christina Sambor, Director of FUSE and former Director of the North Dakota Human Trafficking Task Force in support February 1, 2017

Mr. Chairman and members of the Committee:

The classification of "homeless youth" commonly refers to unaccompanied young people between the ages of 12 and 24 for whom it is not possible to safely live with a relative or in another safe alternative living arrangement.

A lack of adequate data collection on homeless individuals of all ages makes it difficult to precisely measure the scale of the problem of youth homelessness, but population estimates paint a disconcerting picture. The most common estimate of homeless minors in the United States is 1.7 million, a figure derived from the National Incidence Studies of Missing, Abducted, Runaway, and throwaway Children. Homeless youth between the ages of 18 and 24 are a less-studied population, but it is estimated that between 750,000 and 2 million young adults experience homelessness each year. This means that somewhere between 2.4 million and 3.7 million children and young adults are without safe and stable housing every year.

A recent nationwide survey of 354 organizations serving homeless youth approximates that LGBTQ youth comprise, on average, 40 percent of the agencies' clients. Different studies estimate that between 26-46 percent of LGBTQ youth are rejected by their families and put out of their homes for no other reason than being open about who they are. Once on the streets, they face a significant chance of becoming victims of human trafficking. More people are exploited today through human trafficking than at any point in human history, and LGBTQ youth are experiencing sex trafficking at alarming levels. Once trafficked, these youth face beatings, mutilations, brandings, rapes, and a host of other crimes that no one should ever experience. It is alarming to know that of the estimated 40 percent of homeless youth who are LGBTQ in the United States, 58.7 percent of them are exploited through prostitution. This is a much higher rate than the 33.4 percent of heterosexual homeless youth that are at risk of sexual exploitation on the street. LGBTQ youth are 7.4x more likely to experience acts of sexual violence than their heterosexual peers, and are 3-7x more likely to engage in survival sex to meet basic needs, such as shelter, food, drugs, and toiletries.

As we have developed a formalized human trafficking response in North Dakota, we know that the scope and severity of this problem exceeds what any of us doing this work expected. If we are serious about reducing the occurrence of human trafficking in North Dakota, we must continue to work at removing policies that multiply the vulnerabilities of our citizens. Ensuring that LGBTQ North Dakotans have fair access to housing and employment is important step in that direction, and we therefore urge a do pass recommendation on HB 1386.

A# #22
HB 1386
2-1-17

Testimony on Friday 1, 2017; before the Human Services Committee, in favor of HB 1386 – relating to prohibition of discrimination on the basis of sexual orientation.

“Chairman Weisz and members of the Committee, thank you for your time and attention.

My name is Dale Carmen. I am a resident of Bismarck, District 35. I recommend a ‘Do – Pass’ for HB1386. I was not intending to speak to this bill. We just heard 25 – 30 thorough , personal and professional testimonies in favor of HB 1386. However, during the break this morning I asked people in the hall what the opposition to this bill was, and heard, “Bathrooms. An issue is bathrooms.” I’d like to speak about ‘Bathrooms’ in light of this Bill to prevent discrimination on the basis of sexual orientation.

I grew up rural North Dakota with no indoor running water. We had an outhouse, as most other farmers, rural schools and churches did. (nods and chuckles from the older people in the room). Our outhouse was a two-holer. Now, wrap your mind around that...a two-holer....two-people could go at the same time! Some days that was the only way mom and dad could talk privately with a small house and lots of kids. Modesty and privacy issues were different back then!

To address the question, ‘If this Bill passes, what will we do about bathrooms?’ ; I have three comments:

- When Congress passed the Americans With Disabilities Act in the 1990’s, as citizens we squirmed and complained; then got busy and remodeled buildings, roadways and bathrooms. It took time, money and creativity and now millions of otherly-abled people contribute to our national strength and vitality. It is a good investment and the right thing to do.
- I represented the United States with the Peace Corps, serving in India in the field of agriculture. Let me assure you, around the world there are many, many creative ways people solve the ‘bathroom issue’! We can learn from them.
- Lastly, I have confidence in our creative ability as citizens to come up with satisfactory solutions to bathroom use when this Bill is passed. Simply, this is not a plumbing-privacy issue; it is primarily a Justice issue.

I recommend a YES vote to HB1386. Thank you for your attention.

Dale Carmen; 1827 N. 5th St. Bismarck, N. D. 58501 Ph. 701-751-7114

Dale Carmen

A.H. 23
H.B. 1386
2-1-17

Chairman Weisz, Vice-Chairperson Rohr and Members of the Human Services Committee:

My name is Suzanne Bowman. I live in Jamestown, ND with my husband and five children. I am here not on behalf of any organization, just as a citizen of this state which has been my home for the great majority of my life.

Over the past two decades I have been keenly aware of legislative efforts by the LGBTQ community to achieve protected status via non-discrimination statements in Federal and State codes. Four years ago I was here at this committee, hearing testimony on this same legislative effort and speaking in opposition of this effort because I believed then, and I believe even more so today, that this legislation is an overreach with too many unaddressed consequences for religious liberties and public health and safety concerns.

I read H.B. 1386 online last week. I was curious to see if the sponsors of the bill had addressed prominent issues leading to its defeat two years ago. Sadly, I noted that precious little had changed. Following the defeat of this same effort in the last legislative session, the Fargo Forum engaged in a public shaming of legislators who voted to oppose this change to the Century Code. I wrote a letter to the editor published in the Fargo Forum and many other daily newspapers in North Dakota. I chastised The Forum editorial board for shaming the legislators while they, as the media, should be ashamed for poorly educating the public about the many facets of this bill. My letter challenged advocates of this legislation to exercise real leadership by meeting with opposing interests and to sincerely work toward achieving meaningful and beneficial dialogue that could address real concerns but retain protection for the rights and safety of all North Dakota citizens. Apparently that kind of leadership was not exercised.

Now I am here again—hearing stories of people who feel the state isn't doing enough to address their interests. Yet, state officials must remember that there are many interests. Legislators from your body rightly remembered in 2015 that they must protect the basic rights of *all* North Dakotans. H.B. 1386 does not achieve that result. I urge a do not pass recommendation from this committee.

att. 2.H
HB 1386
2-1-17

**Testimony Against House Bill 1386
by Family Policy Alliance of North Dakota
February 1, 2017**

Good morning Chairman Weisz and esteemed members of the House Human Services Committee. My name is Mark Jorritsma, Executive Director of Family Policy Alliance of North Dakota. I am testifying on behalf of our organization and the thousands of our constituents across our great state for you to please recommend a "DO NOT PASS" on House Bill 1386.

However, just as importantly, I come to you as a father. I have a school-age daughter. There is no way I want her to be forced to see some random boy or man expose himself to her. I am frankly frustrated and feel it is beyond comprehension that we are even considering doing this to our wives, daughters, and even granddaughters.

BILL SUMMARY

HB 1386 amends the Human Rights section of the North Dakota Code so that the classifications of "sexual orientation" and "gender identity" are included as protected classes subject to the human rights statutes, thereby granting these classifications the same protected status as "race," "religion," and "national origin." Even "perceived" sexual orientation or gender identity would be included as protected classes.

MAJOR IMPACTS

- This bill would not permit an employer to make a decision to hire/fire based upon an employee's or potential employee's sexual orientation or gender identity.
 - This would include even preschools, daycares, women's shelters, and athletic facilities, such as a gym or pool.
 - This means that a women's shelter could be forced to hire a male (who identifies as female), regardless of the impact this may have on the women.
 - It means that a preschool or afterschool program could be forced to hire a male (who identifies as female) regardless of parents' or children's concerns.

- The bill would likely force private businesses to provide services and participate in events with which they disagree because of sincerely held beliefs.
 - There are examples of Human Rights Laws in other states that include “sexual orientation and gender identity” where those laws have been used to punish and even destroy family businesses, such as where the owners declined to serve a same-sex wedding because of their Christian beliefs—even when they referred the couple to another business that would serve them (e.g., CO, WA, NM, OR, KY, NY).
 - One secondary result of these actions would include less economic activity and tax revenue for the State of North Dakota, at a time when we are facing the difficult task of balancing our budget.
- There is a weak and poorly written exemption for religious organizations, associations, societies or nonprofits. A detailed read of this section reveals that:
 - Religious entities like churches would likely be forced to hire someone who claims to ascribe to their faith, even if the individual is a male who identifies as female and wants to use the female restroom at the church, Christian school, or other ministry.
 - Further, the bill would likely put some ministries/churches in the awkward position of welcoming someone who claims to ascribe to their faith, even if the individual is a male who identifies as female and wants to use the female restroom at the church or Christian school. The church or school would have no recourse, because the individual is “of the same religion.”
- Would put state and local government entities at risk of being sued or increasing their citizens’ risk for:
 - A violation of their privacy
 - Becoming a target for voyeurism charges
 - HB 1386 does not exempt schools. This bill would likely force public schools to permit men in girls’ locker rooms, showers, and bathrooms—regardless of parent desires or children’s right to privacy. This bill would put North Dakota public schools at risk of being sued or increasing their students’ risk of privacy violations.
- Would force housing owners/directors to NOT consider gender identity when it comes to housing. This means women’s shelters, homes for single moms, etc. would be forced to permit men—ignoring the past sexual or physical abuse some of these women have faced and the trauma a male presence may cause them.

SUMMARY

- You can dress this bill up all you want. The bottom line is it will still force women and girls to share bathrooms, locker rooms, and showers with men.
- No girl or woman should ever be forced to use the bathroom, shower, or undress next to a man in a public space.
- Family Policy Alliance of North Dakota supports the right to safety and privacy for all North Dakotans, especially women and girls.
- Some states have passed these types of policies without ever bothering to ask women and girls, who will be impacted most, how they feel. The privacy and safety of North Dakota women and girls must be respected, and their voices must be heard.
- Schools have a duty to protect the privacy, safety and dignity of all students.
- This bill would fail North Dakota women and girls who have already been traumatized by sexual abuse.
- This bill, which would force women's shelters to cause potential harm to the women who come to them seeking refuge from their past experiences, defies common sense and fails North Dakota women and girls.
- Businesses and churches should be free to protect the privacy and safety of every North Dakotan who comes through their doors.
- This bill could very well make North Dakota workplaces less safe.
- The primary duty of government is to protect its citizens—this bill would put North Dakotans at risk.
- All North Dakotans should be free to live and work according to their beliefs—this bill would gravely harm that freedom.
- Forcing North Dakotans to give up their faith in order to earn a living is not the type of state we want.
- No bill of this kind has been passed in any state since 2011, despite numerous attempts, with the exception of one Utah bill that was even criticized by LGBT activists. This means that even with the support of liberal portions of the media and heavy pressure from the Obama Administration on this issue, states have refused to pass these laws because they violate the privacy and safety of women and girls, harm businesses, and harm freedom. Why should North Dakota bow to the “politically correct” pressure that other states have successfully resisted?

FINAL THOUGHTS

Let me close with a personal perspective. I'd like to go back to my daughter who I mentioned at the beginning of my testimony. She is 17-years-old and provided a short write-up for a recent reception our organization held for legislators. I'd like to read an excerpt from what she wrote, which I believe really encapsulates quite well the issue before us today.

Why are you here, legislators? You are here because you believe that our world can be changed for the better. You came here to change the world not only for those who voted you into your position, but for people like me, people who do not yet have a voice. You are speaking out in our silence to make the world a better place.

So please, speak for those of us still too young to direct the course of our world. Speak bravely for what is right and do not be silent, for if you do not speak out, who will safeguard this world that my generation will all too soon inherit?

You have been given a rare and precious gift; the ability to make a powerful and lasting impact on the world. Will you be brave enough to seize it?

So, in conclusion, please vote House Bill 1386 out of committee with a "DO NOT PASS" recommendation. Thank you for the opportunity to testify, and I am now happy to take any questions you might have.



att. 25
HB 1386
2-1-17

**To the House Human Services Committee
Testimony in Opposition to HB 1386
Wednesday, February 1, 2017**

Mr. Chairman and members of the committee, my name is Linda Thorson, and I am the State Director for Concerned Women for America (CWA) of North Dakota. CWA is the largest public policy women's organization in the nation. We are here today on behalf of our North Dakota members in opposition to HB 1386.

We fail to see the evidence that sexual orientation and "gender identity" meets the criteria set forth by the U.S. Supreme Court defining a minority. The Court devised a three-part test to determine whether a class of persons qualifies as a true minority: 1.) They must be defined by an immutable characteristic (unchangeable, like skin color); 2.) they must be economically deprived, and 3.) they must suffer from a history of discrimination and political powerlessness. Sexual orientation fits into none of these requisite categories. Instead, multiple studies show that sexual behavior is changeable, that those who practice non-traditional sexual preference are largely affluent, and that their activists represent one of the most powerful lobbies in the world per capita.

Special rights have historically been afforded to certain groups in order to ensure that individuals are not discriminated against due to immutable characteristics. North Dakota law already protects these characteristics. Further, the bill has no exemptions for those with personal convictions, thus forcing individuals and businesses to accept and support sexual behaviors with which they disagree.

In the case of sexual orientation and "gender identity," the proposed addition to discrimination statutes is based on an undefined behavior. This is a dangerous precedent affecting public policy regarding marriage, families and the culture in general. A chosen behavior should not be the basis for changing law. Adding "gender identity" as an expression of self-image or identity not associated with one's biological gender forces North Dakota's employers and citizens to pretend, by force of law, that a man is a woman or vice versa based on that person's self-perception or behavior at that given time.

This bill places sexual orientation and self-perceived gender identity not as a protected class, but as a privileged group. Sexual orientation and other manifestations of gender identity do not fit into what constitutes a true minority and should not be added to laws dealing with discrimination. North Dakota citizens are already protected equally under the law, and by responding to the emotions or perceived political correctness of the propaganda put forth nationwide as it relates to "sexual orientation," defining it in law is a Pandora's Box of faulty law writing. The strategy behind promoting these types of

Concerned Women for America of North Dakota

unconstitutional laws across the nation is this: Transform morality into a form of bigotry and then use corporate and government power to eliminate that "bigotry." The goal is to alter America's cultural values and use "bigotry" as a threat in the process of elevating a certain group to protected status above others based on sexual behaviors.

HB 1386 creates discrimination. When "sexual orientation" or "gender identity" is added to a legal or corporate nondiscrimination code, it is a giant step toward the adoption of policies that discriminate against people with traditional views. If we look closely at the term "sexual orientation," it is a radical challenge to the beliefs of all major religious faiths because it attacks and opposes the notion that sexual behavior has moral dimensions. According to the therapeutic manual of the American Psychiatric Association, there are at least 23 distinctive sexual variations of "sexual orientation," and perhaps many more. It includes pedophilia, voyeurism and exhibitionism, just to name a few (see attachment). Since the underlying concept of "sexual orientation" is that all sexual behavior is equally valid, it follows there are no good choices or bad choices, just inclination. There is no longer any definition of the two sexes. HB 1386 would force the acceptance of any "inclination." Private businesses and organizations should not be forced by the state to set aside their moral or religious principles, based upon someone's proposed rights due to the individual's sexual behavior.

Dr. Ben Carson, nominee for the Secretary of the Department of Housing and Urban Development, said, "I think all Americans should be protected under the law. What I have said before is I don't think anyone should get extra rights." This law would not protect rights but would rather grant special privileges based strictly on someone's sexual behavior. Further, those privileges would have a significant impact on the constitutional rights of North Dakotans who may have a moral objection to certain sexual behavior. Both federal and North Dakota law already prohibits sex discrimination and sexual harassment. If HB 1386 becomes law, it will communicate to the citizens of North Dakota that the political agenda of a few is more important than the time-honored and cherished First Amendment principles upon which our country was founded and promised to everyone. Should sexual preference now trump the rights of free speech and freedom of religion?

It may be claimed to be politically incorrect, but should what happens between two consenting adults in privacy even be of public and legislative discussion or concern? We think not. If we allow "sexual orientation" and "gender identity" to become a matter of laws and policies, it will reach our workplaces, our schools, our families and our children and even our houses of worship creating a society that no longer has "equal under the law" as a principle. This will surely challenge the common sense, strength of character and founding principles on which this great nation and state were built. The liberties we now all enjoy, regardless of sexual orientation, will all stand defenseless against this discriminatory proposed law. It will have a negative effect on our society, removing moral boundaries and allowing the further sexualization of our public square.

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

Concerned Women for America of North Dakota

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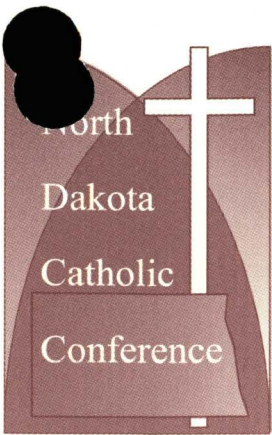
We, again, urge your "Do Not Pass" vote on HB 1386. Your consideration of this request is appreciated.

APPENDIX OF SEXUAL BEHAVIORS

WARNING: some of the descriptions may be offensive to readers' sensibilities.

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

1. Heterosexuality: the universal norm: sexual interaction with the opposite sex.
2. Homosexuality of "Gay": sexual interaction with persons of the same sex.
3. Bisexuality: sexual interaction with both males and females.
4. Transgenderism: an umbrella term referring to and/or covering transvestitism, drag queen/kings, and transsexualism.
5. Pedophilia: "sexual activity with a prepubescent child (generally age 13 years or younger). The individual with Pedophilia must be age 16 years or older and at least 5 years older than the child. For individuals in late adolescence with Pedophilia, no precise age difference age difference is specified, and clinical judgement must be used; both the sexual maturity of the child and the age difference must be taken into account." (p.571)
6. Transsexuality: the condition in which a person's "gender" identity is different from his or her anatomical sex.
7. Transvestitism: the condition in which a person is sexually stimulated or gratified by wearing the clothes of the other sex.
8. Transvestic fetishism: for males, "intense sexually arousing fantasies, sexual urges, or behaviors involving cross-dressing." (p.575)
9. Autogynephilia: the sexual arousal of a man by his own perception of himself as a woman or dressed as a woman. (p.574)



Representing the Diocese of Fargo
and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

Att. 26
HB1386
2-1-17

To: House Human Services Committee
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1386 - Discrimination on the Basis of Sexual Orientation
Date: February 1, 2017

The Catholic Church affirms the dignity of every human life and rejects unjust discrimination. Acts of violence, degradation, or diminishment toward any human person 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 or self-perceived gender identity.

But this legislation is not about how we feel about discrimination based on sexual orientation or gender identity. 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. This bill would create special protections for a certain class of activities and feelings- not individuals.¹ Civil rights categories should not be used to cover a particular group's sexual activities or perceptions.

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. Do not be fooled by the bill's "religious exemptions."

The problems with the purported exemptions are numerous. Here are just a few: The first exemption applies only to *employment* matters when hiring employees and volunteers for *religious* positions. The second purported exemption also applies only to *employment* matters, but would require the religious organization to restrict its employment to people of the same religion, effectively scaling-back protections that exist in the current law. The third exemption states that a religious organization can limit admission to places of worship and parochial schools to people of the same religion. It should not take too much imagination to envision all the situations left out of these exemptions. Most notably, the exemptions are only defenses to claims of discrimination based on religion, not sexual orientation.

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House Bill 1386 would also radically depart from state policy, especially when it comes to our youth and those in need of medical care. Gender identity disorder and gender dysphoria are controversial topics. Debate continues as to how they should be addressed. Certainly, for many of those who experience these conditions, they constitute a challenge that should not be dismissed from our concern and care. By applying self-perceived gender identity to the Act's provisions on public accommodations and government services, however, the bill replaces concern and care with politics and litigation.

House Bill 1386 strips local school districts of their ability to address issues concerning gender identity. Rather than allowing a school to approach issues of gender identity disorder and gender dysphoria in a manner that best addresses the needs of that student in consideration parental wishes and school practices, HB 1386 imposes a top-down, one-size-fits-all approach that reflects a contested and controversial gender ideology. House Bill 1368 does the same for all state and local agencies, including the state high school activities association, and places of accommodation, including private youth organizations.

Similarly, as has been done in other jurisdictions, language like that in House Bill 1386, could be used to impose a particular gender ideology on the state's health care providers, even if that ideology is not in the best interests of the patient or would require providers and employees — including chaplains — to engage in what they consider at best counter-therapeutic for the patient and, at worse, complicity in a falsehood.

Our state Attorney General has sued the federal government to protect the rights of local school districts and state health care providers. Why would this body undermine the General and disregard the concerns of our schools and health care providers by passing this sweeping bill?

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.

Written but not oral
HB 1386 #27
2-1-17

I'm writing to encourage you to cast a Do Pass vote for HB 1386. It is time for North Dakota to add sexual-orientation and gender identity to the state's non-discrimination policy. I am a heterosexual woman whose gender identity matches the gender assignment I was given at birth. I write to you today as an ally of our LGBT community in North Dakota, as a mother of two children who I am raising to be kind and fair, and as a resident who loves this state and wants to see it protect all of its residents, not just those like me.

I never realized the relative ease with which I move through life as a cisgender, heterosexual woman until I began listening to the experiences and fears of my LGBT friends and family members. Take, for instance, the transgender undergraduate student with whom I have worked closely for several years as a university professor. This is a young person who has bravely come out as a transgender man only to be shunned by his family and painted as a threat by the larger community that won't even let him go to the bathroom in peace. This young man is a kind and generous human being who is seeking a university education so that he can make a positive impact on our state and society. He deserves fair and equal treatment under the law, but that is certainly not what he gets. Our current laws leave him and every other member of the LGBT community vulnerable to discrimination. If you need evidence that such discrimination exists, I encourage you to spend five minutes talking to LGBT North Dakotans. It will become abundantly clear that discrimination is not just a possibility, it is a painful and recurring reality.

As I teach my students about U.S. history and the principles of equality upon which this country was founded, I know that too many of them are excluded from the American promise. We can change that right here in North Dakota by passing HB 1386. Please cast a Do Pass vote on behalf of all North Dakotans.

Sincerely,

Nikki Berg Burin

P.S. I respectfully request that you print my testimony and include it with the Human Services Committee Hearing testimony journal on record.



Att. 1
HB 1386
2/8/17

**Testimony on HB 1386
Prepared for the House Human Services Committee**

February 1, 2017

Good morning Chairman Weisz and members of the Human Services Committee, my name is Michelle Kommer and I am the Commissioner of Labor. I appear before you today neutral on HB 1386. I would like to provide an overview of current law and how the Department of Labor and Human Rights (Department) administers the law related to claims of discrimination, how HB 1386 would change current law, developments in the law regarding sexual orientation and gender identity discrimination, and how HB 1386 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, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA).

Housing. The Federal Department of Housing and Urban Development (HUD) has deemed the North Dakota law housing "substantially equivalent" to the Fair Housing Act, meaning that it offers at least the same protections and remedies as the federal law. The substantial

equivalency status of the law allows the department to enter into work sharing agreements with HUD, which provides funding to the department in exchange for access to the department's investigative findings in housing discrimination complaints.

Employment. In addition to its partnership with HUD, the Department was designated a Fair Employment Practices Agency (FEPA) by the Federal Equal Employment Opportunity Commission (EEOC) in October 1987. This designation permits the Department to contract with the EEOC to conduct investigations for the federal agency.

Under these contracts, complaints meeting both federal and state jurisdictions are "dual-filed" under both state and federal statutes with a single investigation conducted by the department. Both contracts award the Department funding tied to the number of cases closed during a contract period.

Developments in the area of Sexual Orientation and Gender Identity as a Protected Category

Currently, 20 states and the District of Columbia have passed legislation that makes sexual orientation and gender identify a protected category in their human rights laws. Two state laws include sexual orientation but not gender identity as a protected category. In addition, President Obama 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.

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. *I have attached to this testimony Attachment A, EEOC fact sheet describing this position.* 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's current Strategic Enforcement Plan¹ (SEP) includes the "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions" as a top Commission enforcement priority. The EEOC has been active in pursuing and prevailing in litigation on this theory. *I have attached to this testimony, Attachment B, an EEOC fact sheet reviewing recent EEOC litigation regarding Title VII and LGBT-related discrimination.*

There is a growing body of federal case law supporting coverage for individuals who are transgender and sexual-orientation related discrimination as sex discrimination. *I have attached to this testimony, Attachment C, an EEOC publication reviewing these recent federal court decisions.* This said, sexual orientation is not expressly cited as a protected category under Title VII.

HB 1386 and its Impacts

Today, when the Department receives complaints alleging sexual orientation or gender identity-related discrimination in employment we draft the complaint, and

¹ Adopted in December of 2012

unlike other complaints of discrimination covered by state law, we forward the complaint to the EEOC. The Department does not investigate these complaints, as the Department has interpreted past actions by the Legislature to indicate it is not the Legislature's intent that sexual orientation (nor gender identity) be considered a protected category under the Human Rights Act.

HB 1386 would add sexual orientation and gender identity as protected categories under both the Human Rights Act and the Housing Discrimination Act, prohibiting discrimination on such bases in the areas of employment, housing, public services, public accommodations, and credit transactions. There are certain exemptions for religious organizations, as set forth in the bill.

While it is difficult to determine the impact of HB 1386 on the Department, in June of 2015, at the request of Representative Joshua Boschée, the Department began manually tracking contacts related to sexual orientation and gender identity which could be helpful to developing an estimate. From that time to present, the Department received 17 contacts. These contacts included anonymous calls, walk-ins, and correspondence. Two charges were forwarded to the EEOC, which is consistent with my predecessor's estimation in 2015 that the Department forwarded 1-2 charges to the EEOC per year.

Notably, these numbers do not account for any individuals who may have declined to contact the Department given that sexual orientation and gender identity are not specifically named as protected categories under Title VII or North Dakota state non-discrimination laws. To fill that gap, we may look to the EEOC or other states with this protection in place. The EEOC's 2015 Fiscal Year Analysis estimates the proportion of sex discrimination charges which involve alleged discrimination on the basis of sexual orientation or transgender/gender identity status, finding sexual orientation discrimination claims to represent approximately 4.5 percent of the total sex discrimination charges filed in 2015 and sexual orientation and transgender/gender identity discrimination charges to comprise 5.3 percent of the total sex discrimination charges. In 2015, approximately 4 percent of Minnesota's complaints under its human rights act were based on sexual orientation or gender identity.

The Department closed 439 investigations under state and federal discrimination statutes during calendar year 2016. If one uses a 4% increase in cases, the Department could see an increase in its caseload of approximately 18 cases per year. This being said, these numbers remain estimates, and may not accurately forecast actual activity.

Thank you and I would be happy to answer any questions the committee may have.

Attachment A



U.S. Equal Employment Opportunity Commission

What You Should Know About EEOC and the Enforcement Protections for LGBT Workers

- [Overview](#)
- [Examples of LGBT-Related Sex Discrimination Claims](#)
- [Applicable Federal Law](#)
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Overview

EEOC interprets and enforces Title VII's prohibition of sex discrimination as forbidding any employment discrimination based on **gender identity or sexual orientation**. These protections apply regardless of any contrary [state or local laws](#).

Through investigation, conciliation, and [litigation](#) of charges by individuals against private sector employers, as well as [hearings and appeals](#) for federal sector workers, the Commission has taken the position that existing sex discrimination provisions in Title VII protect lesbian, gay, bisexual, and transgender (LGBT) applicants and employees against employment bias. The Commission has obtained approximately \$6.4 million in monetary relief for individuals, as well as numerous employer policy changes, in voluntary resolutions of LGBT discrimination charges under Title VII since data collection began in 2013. A growing number of [court decisions](#) have endorsed the Commission's interpretation of Title VII.

The information provided below highlights what you should know about EEOC's outreach and enforcement in this area.

Examples of LGBT-Related Sex Discrimination Claims

Some examples of LGBT-related claims that EEOC views as unlawful sex discrimination include:

- Failing to hire an applicant because she is [a transgender woman](#).
- Firing an employee because he is planning or has made a [gender transition](#).
- Denying an employee equal access to a common [restroom](#) corresponding to the employee's gender identity.
- Harassing an employee because of a gender transition, such as by intentionally and persistently [failing to use the name and gender pronoun that correspond to the gender identity with which the employee identifies](#), and which the employee has communicated to management and employees.
- Denying an employee a promotion because he is [gay or straight](#).
- Discriminating in [terms, conditions, or privileges of employment](#), such as providing a lower salary to an employee because of sexual orientation, or denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.
- [Harassing](#) an employee because of his or her sexual orientation, for example, by derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex.
- Discriminating against or harassing an employee because of his or her sexual orientation or gender identity, in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability.

See Also:

- [Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination](#)
- [Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII](#)
- [Federal Sector Cases Involving LGBT Individuals](#)
- [Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment: A Guide to Employment Rights, Protections, and Responsibilities](#)
- [Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964](#)

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See [How to File a Charge of Employment Discrimination](#) for information about filing a Title VII charge of sex discrimination in employment related to gender identity or sexual orientation bias. There is a different [complaint process for federal employees](#).

Applicable Federal Law

EEOC is responsible for enforcing federal laws that make it illegal to discriminate in employment against a job applicant, employee, or former employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. These federal laws also prohibit employers from retaliating against workers who oppose discriminatory employment practices - for example, by reporting incidents of sexual harassment to their supervisor or human resources department - or against those who participate in an employment discrimination proceeding - for example by filing an EEOC charge, cooperating with an EEOC investigation, or participating in an employment discrimination lawsuit.

While Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity in its list of protected bases, the Commission, consistent with Supreme Court case law holding that employment actions motivated by gender stereotyping are unlawful sex discrimination and other [court decisions](#), interprets the statute's sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.

Over the past several years the Commission has set forth its position in several published decisions involving [federal employment](#). These decisions explain the legal basis for concluding that LGBT-related discrimination constitutes sex discrimination under Title VII, and give examples of what would be considered unlawful. In so ruling, the Commission has not recognized any new protected characteristics under Title VII. Rather, it has applied existing Title VII precedents to sex discrimination claims raised by LGBT individuals. The Commission has reiterated these positions through recent [amicus curiae](#) briefs and [litigation](#) against private companies.

Sex Discrimination - Transgender Status

In *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (April 20, 2012), the Commission held that intentional discrimination against a transgender individual because that person's gender identity is, by definition, discrimination based on sex and therefore violates Title VII.

The *Macy* decision explains that allegations of gender identity/transgender discrimination necessarily involve sex discrimination. Such cases can be viewed as sex discrimination based on non-conformance with gender norms and stereotypes under the Supreme Court's 1989 decision in *Price Waterhouse v. Hopkins*, and based on a plain reading of the statute's "because of . . . sex" language.

Applying *Macy*, the Commission has also held that an employer's restrictions on a transgender woman's ability to use a common female restroom facility constitutes disparate treatment, *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015), that intentional misuse of a transgender employee's new name and pronoun may constitute sex-based discrimination and/or harassment, *Jameson v. U.S. Postal Service*, EEOC Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013), and that an employer's failure to revise its records pursuant to changes in gender identity stated a valid Title VII sex discrimination claim, *Complainant v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120133123, 2014 WL 1653484 (Apr. 16, 2014).

Sex Discrimination - Sexual Orientation

In *Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015), the Commission held that a claim of discrimination on the basis of sexual orientation necessarily states a claim of discrimination on the basis of sex under Title VII.

The *Baldwin* decision explains that allegations of sexual orientation discrimination necessarily involve sex-based considerations. First, discrimination on the basis of sexual orientation necessarily involves treating an employee differently because of his or her sex. For example, a lesbian employee disciplined for displaying a picture of her female spouse can allege that an employer took a different action against her based on her sex where the employer did not discipline a male employee for displaying a picture of his female spouse. Sexual orientation discrimination is also sex discrimination because it is associational discrimination on the basis of sex. That is, an employee alleging discrimination on the basis of sexual orientation is alleging that the employer took the employee's sex into account by treating him or her differently for associating with a person of the same sex. Finally, discrimination on the basis of sexual orientation is sex discrimination because it necessarily involves discrimination based on gender stereotypes, including employer beliefs about the person to whom the employee should be attracted.

Charge Data

In FY 2015, EEOC received a total of 1,412 charges that included allegations of sex discrimination related to sexual orientation and/or gender identity/transgender status. This represents an increase of approximately 28%

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over the total LGBT charges filed in FY 2014 (1,100). EEOC resolved a total of 1,135 LGBT charges in FY 2015, including through voluntary agreements providing approximately \$3.3 million in monetary relief for workers and achieving changes in employer policies so that discrimination would not recur. This reflects increases of 34% in the number of resolutions over FY 2014 (847) and 51% in the amount of monetary relief over FY 2014 (\$2.19 million). The chart below shows charges received or resolved during FY 2015.

FY 2015			
	Total LGBT	Sex-Gender Identity/Transgender	Sex-Sexual Orientation
Total Receipts	1,412	271	1,181
Total Resolutions	1,135	184	975
Settlements	96	12	85
	8.5%	6.5%	8.7%
Withdrawals w/Benefits	57	6	53
	5.0%	3.3%	5.4%
Administrative Closures	203	38	168
	17.9%	20.7%	17.2%
No Reasonable Cause	737	110	644
	64.9%	59.8%	66.1%
Reasonable Cause	42	18	25
	3.7%	9.8%	2.6%
Successful Conciliations	13	7	6
	1.1%	3.8%	0.6%
Unsuccessful Conciliations	29	11	19
	2.6%	6.0%	1.9%

FY 2015			
	Total LGBT	Sex-Gender Identity/Transgender	Sex-Sexual Orientation
Merit Resolutions	195	36	163
	17.2%	19.6%	16.7%
Monetary Benefits (Millions)*	\$3.3	\$0.3	\$3.0

Note: Charges may have multiple allegations under multiple statutes, so totals will not tally with breakdowns of specific bases or issues and are subject to updates. Monetary benefits include amounts which have been recovered exclusively or partially on non-LGBT claims included in the charge.

See our table of all [charge receipts and resolutions under Title VII](#).

Conciliation and Litigation

When the Commission finds reasonable cause to believe that discrimination has occurred, it seeks to resolve the matter voluntarily through informal means of conciliation, conference, and persuasion. If the Commission is unable to secure a voluntary resolution, it has authority to file suit in federal court. In several cases, the Commission has filed LGBT-related lawsuits under Title VII challenging alleged sex discrimination. Read about [examples of pending and resolved EEOC litigation involving Title VII sex discrimination claims](#) brought on behalf of LGBT individuals, as well as EEOC amicus briefs filed in suits brought by private individuals raising these issues.

Federal Sector Enforcement

In the federal sector, EEOC has implemented its priority for covering LGBT individuals in a variety of ways:

- Tracking gender identity and sexual orientation appeals in the federal sector
- Issuing 20 [federal sector decisions](#) in FY 2015, including finding that gender identity-related complaints and sexual orientation discrimination-related complaints can be brought under Title VII through the federal sector EEO complaint process. For example, in *Larita G. v. U.S. Postal Service*, EEOC Appeal No. 0120142154 (Nov. 18, 2015), EEOC reversed the Agency's dismissal of a hostile work environment claim on the basis of sexual orientation because such an allegation is necessarily an allegation of sex discrimination under Title VII.
- Establishing an LGBT workgroup to further EEOC's adjudicatory and oversight responsibilities
- Issuing guidance, including [instructions for processing complaints](#) of discrimination by LGBT federal employees and applicants available on EEOC's public web site
- Providing technical assistance to federal agencies in the development of gender transition policies and plans
- Providing LGBT related outreach to federal agencies through briefings, presentations, and case law updates

Training and Outreach

EEOC is addressing LGBT legal developments in numerous outreach and training presentations to the public. During FY 2015, field office staff conducted more than 700 events and reached over 43,000 attendees where LGBT sex-discrimination issues were among the topics discussed. In the federal sector during FY 2015, there were approximately 53 presentations delivered to over 4,400 federal sector audience members. These events reached a wide variety of audiences, including employee advocacy groups, small employer groups, students and staff at colleges and universities, staff and managers at federal agencies and human resource professionals. To assist in this outreach, EEOC is distributing a brochure, [Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Employees](#).

Resources

The Commission has issued various technical assistance publications on LGBT issues, including:



- Fact Sheet on Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination, www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm
- Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII, www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm
- Federal Sector Cases Involving LGBT Individuals, www.eeoc.gov/federal/reports/lgbt_cases.cfm
- Brochure on Preventing Employment Discrimination Against Lesbian, Gay, Bisexual, or Transgender Employees, http://www.eeoc.gov/eeoc/publications/brochure-gender_stereotyping.cfm.
- OPM-EEOC-OSC-MSPB Guide: Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment, www.opm.gov/LGBTGuide
- Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964, www.eeoc.gov/eeoc/publications/fs-bathroom-access-transgender.cfm

Useful resources from other agencies include:

- OPM Guidance on Employment of Transgender Individuals www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/
- U.S. Department of Labor/OSHA Guide to Restroom Access for Transgender Workers, <https://www.osha.gov/Publications/OSHA3795.pdf>
- U.S. Department of Justice Memorandum on Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964, <http://www.justice.gov/file/188671/download>

Other Laws

Be aware of other laws that also may apply:

- Federal contractors and sub-contractors are covered by a separate, explicit prohibition on transgender or sexual orientation discrimination in employment pursuant to Executive Order 13672 and implementing regulations issued and enforced by the U.S. Department of Labor's Office of Federal Contract Compliance. For more information, see [Frequently Asked Questions](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html) on E.O. 13672 Final Rule, www.dol.gov/ofccp/LGBT/LGBT_FAQs.html
- State or local fair employment laws may explicitly prohibit discrimination based on sexual orientation or gender identity. Contact information for state and local fair employment agencies can be found on the page for EEOC's [field office](#) covering that state or locality. On the other hand, if a state or local law permits or does not prohibit discrimination based on sexual orientation or gender identity, the EEOC will still enforce Title VII's discrimination prohibitions against covered employers in that jurisdiction because contrary state law is not a defense under Title VII. Applicants and employees in those jurisdictions should contact the EEOC directly if they believe they have been subjected to sex discrimination based on sexual orientation or gender identity.

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Attachment B



U.S. Equal Employment Opportunity Commission

Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination

(Last Updated 7-08-16)

Overview

The Commission adopted its current Strategic Enforcement Plan (SEP) in December of 2012. The SEP includes "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply" as a top Commission enforcement priority.

Consistent with this priority, the Commission's General Counsel formed an LGBT working group that provides advice and input to the Agency's litigators on developing litigation-related vehicles. This work group also coordinates internal initiatives and policies, trains internal staff, and conducts outreach with external stakeholders.

In addition, Agency litigators have filed lawsuits and amicus curiae briefs in various courts addressing a multitude of LGBT discrimination-related issues. These include:

Litigation

Pending Cases

- **EEOC v. Bojangles Restaurants, Inc.**, (E.D. N.C., Civ. No. 5:16-cv-00654-BO, filed July 6, 2016). The EEOC sued Bojangles Restaurants, Inc., a North Carolina corporation operating a chain of fast food restaurants, alleging that it discriminated against charging party, Jonathan Wolfe, a transgender woman, by subjecting her to a hostile work environment because of her gender identity in violation of Title VII. Specifically, the EEOC alleges that Wolfe was repeatedly subjected to offensive comments about her gender identity and appearance, in particular belittling comments by managers demanding that Wolfe engage in behavior and grooming practices that are stereotypically male. The EEOC is seeking injunctive relief to prohibit Bojangles Restaurants from engaging in unlawful sex discrimination in the future, as well as backpay, compensatory damages, and punitive damages for Wolfe.
- **EEOC v. Scott Medical Health Center, P.C.**, (W.D. Pa., Civ. No. 2:16-cv-00225-CB, filed March 1, 2016). The EEOC sued Scott Medical Health Center, P.C., a provider of pain management and weight loss services, alleging that it discriminated against charging party Dale Baxley on the basis of sex in violation of Title VII when it subjected him to harassment because of his sexual orientation and/or because he did not conform to the employer's gender-based expectations, preferences, or stereotypes. The Commission further alleges that the defendant failed to take action to stop the harassment after Baxley complained, resulting in his constructive discharge. According to the EEOC's lawsuit, Baxley's immediate supervisor knew that Baxley was gay and frequently assailed him with highly offensive anti-gay epithets, and other vulgar epithets based on sex stereotypes. When Baxley complained about the harassment to the medical director, the medical director took no corrective action. After two to three more weeks of continued harassment, Baxley resigned to avoid being subjected to the highly offensive conduct. The EEOC is seeking injunctive relief to prohibit Scott Medical Health Center, P.C. from engaging in unlawful sex discrimination in the future, as well as backpay, compensatory damages, and punitive damages for Baxley.
- **EEOC v. R.G. & G.R. Harris Funeral Homes Inc.** (E.D. Mich., Civ. No. 2:14-cv-13710-SFC-DRG, filed Sept. 25, 2014). The EEOC sued Detroit-based R.G. & G.R. Harris Funeral Homes Inc., alleging that it discriminated based on sex by firing a funeral director/embalmer because she is transgender, because she was transitioning from male to female, and/or because she did not conform to the employer's gender-based expectations, preferences, or stereotypes in violation of Title VII. The Commission alleges that Amiee Stephens had been employed by Harris as a funeral Director/Embalmer since October 2007 and had always adequately performed the duties of that position. In 2013, she gave Harris a letter explaining she was undergoing a gender transition from male to female, and would soon start to present (e.g., dress) in appropriate business attire at work, consistent with her gender identity as a woman. Two weeks later, Harris's owner fired Stephens, telling her that what she was "proposing to do" was unacceptable. Defendant filed a

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motion to dismiss the complaint on November 19, 2014. The EEOC opposed the motion on December 10, 2014. On April 23, 2015, the court denied defendant's motion to dismiss. The court acknowledged that "even though transgender/transsexual status is currently not a protected class under Title VII, Title VII nevertheless 'protects transsexuals from discrimination for failing to act in accordance and/or identify with their perceived sex or gender.'" *Id.* at 8. The court concluded that the EEOC had sufficiently pled a sex-stereotyping gender-discrimination claim under Title VII because the Commission alleged that Stephen's failure to conform to sex stereotypes was the driving force behind the funeral home's decision to fire Stephens. *Id.* at 14.

- ***Broussard v. First Tower Loan LLC*** (E.D. La., Civ. No. 2:15-cv-01161-CJB-SS) (court granted EEOC's Motion to intervene on September 17, 2015). Plaintiff Tristan Broussard filed this Title VII suit against his former employer, First Tower Loan LLC, alleging he was fired on the basis of gender identity in violation of Title VII. Broussard was a manager-trainee for defendant. While completing employment paperwork, he was required to produce his driver's license as a valid form of identification. A manager questioned why the license listed his sex as "F" and Broussard explained he is a transgender man. Several days later, First Tower's Vice President informed Broussard that he must dress and act as a female in the workplace because it was confusing to customers. As a condition of employment, First Tower required him to sign a statement agreeing to act and be treated as a female rather than as a male while working for First Tower Loan. Broussard refused, and First Tower fired him.

Broussard's complaint alleges that First Tower Loan's decided to terminate him because he is transgender and because of his inability to conform to First Tower Loan's stereotypical expectations of gender. He further alleges that defendant's requirements that he should agree to be treated as female, including dress and conduct, violates Title VII's prohibition on employment discrimination because of sex. Broussard first filed charges with the EEOC. The Commission investigated the discrimination charged and issued a notice of right to sue. In September 2015, the court granted the EEOC's motion to intervene. The Commission's lawsuit seeks injunctive relief to prohibit First Tower Loan from engaging in unlawful sex discrimination in the future, as well as lost wages, compensatory and punitive damage for Broussard.

On December 10, 2015, the court issued an order staying the EEOC's suit pending private arbitration between Broussard and the defendant. On January 7, 2016, the Commission filed a motion to reconsider that order staying the EEOC's claims. This motion is pending before the court.

Resolved Cases

- ***EEOC v. Pallet Companies d/b/a IFCO Sys. North Am., Inc.*** (hereinafter "IFCO"), (D. Md., Civ. No. 1:16-cv-00595-CCB, filed Mar. 1, 2016, settled June 28, 2016). The EEOC sued IFCO, a provider of reusable plastic containers, alleging that it discriminated against charging party, Yolanda Boone on the basis of sex by terminating her for complaining about harassment. The EEOC alleged that Boone, a lesbian woman, was harassed because of her sexual orientation and/or her non-conformity with the employer's gender-based expectations, preferences, or stereotypes in violation of Title VII. The EEOC further alleged that Boone's supervisor harassed her by repeatedly making comments, sometimes accompanied by sexually suggestive gestures, about her sexual orientation and nonconformity with stereotypical female gender norms. A few days after Boone complained to management and contacted IFCO's employee complaint hotline, IFCO retaliated against her by terminating her employment. As part of the settlement agreement, IFCO agreed to pay \$202,200 in damages (\$182,200 for Boone and \$20,000 to the Human Rights Campaign Foundation). The two year consent decree also enjoins IFCO from engaging in sex discrimination or retaliation in the future and requires IFCO to retain an expert on sexual orientation, gender identity, and transgender training to assist in developing a training program for IFCO's staff on LGBT workplace issues, among other injunctive relief.
- ***EEOC v. Deluxe Financial Services Corp.***, (D. Minn., Civ. No. 0:15-cv-02646-ADM-SER, filed June 4, 2015, settled January 20, 2016). The EEOC sued Deluxe Financial Services Corporation, a check-printing and financial services corporation, alleging that after charging party, Britney Austin, began to present at work as a woman and informed her supervisors that she was transgender, Deluxe refused to let her use the women's restroom in violation of Title VII. The Commission further alleged that supervisors and coworkers subjected her to a hostile work environment, including hurtful epithets and intentionally using the wrong gender pronouns to refer to her. As part of a settlement agreement, Deluxe agreed to pay \$115,000 in damages. Furthermore, a three-year consent decree provides that Deluxe will not make exclusions in their healthcare benefits plan for medically necessary care based on transgender status, will revise employment policies including a commitment to preventing unlawful sex discrimination, and will provide employee training explaining that unlawful sex discrimination includes discrimination based on sex-stereotypes, gender-identity, and transgender status.
- ***EEOC v. Lakeland Eye Clinic, P.A.*** (M.D. Fla., Civ. No. 8:14-cv-2421-T35 AEP, filed Sept. 25, 2014, settled April 9, 2015). The EEOC sued Lakeland Eye Clinic, an organization of health care professionals, alleging that it discriminated based on sex by firing an employee because she is transgender, because she was transitioning from male to female, and/or because she did not conform to the employer's gender-based expectations, preferences, or stereotypes in violation of Title VII. According to the EEOC's lawsuit, the defendant's employee had performed her duties satisfactorily throughout her employment. However, after she began to present as a woman and informed the clinic she was transgender, Lakeland fired her. In April

2015, Defendant agreed to settle the case by entering into a two year consent decree which includes injunctive relief and \$150,000 in monetary damages.

Appellate Cases

- **EEOC v. Boh Bros. Constr. Co. LLC** (5th Cir. 11-30770). The Commission won a jury verdict in the amount of \$451,000 in this Title VII enforcement action with evidence showing that Chuck Wolfe, the supervisor of an all-male construction crew, harassed Kerry Woods, one of his subordinates, and created a hostile work environment. The district court subsequently reduced the verdict to \$301,000 because of statutory limits and also provided injunctive relief to prevent future discrimination. A panel of the Fifth Circuit reversed the jury verdict, and the EEOC sought rehearing en banc. In September 2013, a 10-6 majority of the Court of Appeals upheld the jury verdict except for the punitive damages award.

The Appellate Court held that a plaintiff alleging same-sex harassment can show that the harassment occurred because of sex by showing that it was motivated by the harasser's subjective perception that the victim failed to conform to gender stereotypes. The Court agreed with the Commission that this rule follows from *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), and *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998). The Court ruled that the focus is on the "harasser's subjective perception of the victim" and even an employer's "wrong or ill-informed assumptions about its employee may form the basis of a discrimination claim" since "[w]e do not require a plaintiff to prop up his employer's subjective discriminatory animus by proving that it was rooted in some objective truth." The Court then ruled that the Commission had offered sufficient evidence to sustain the jury's verdict that Wolfe harassed Woods because of sex (here, because Wolfe viewed Woods as "not manly enough"), and that Wolfe's harassment of Woods was sufficiently severe or pervasive to create a hostile environment. See 732 F.3d 444 (5th Cir. 2013) (en banc).

Amicus Briefs

Transgender Status & Gender-Identity

- **Dawson v. H & H Electric, Inc.** (E.D. Ark. No. 4:14cv00583 SWW) (amicus brief filed June 26, 2015). Plaintiff filed this Title VII suit against her employer, alleging discrimination on the basis of her transgender status. At the time she was hired, plaintiff used her birth name and presented as a male. After a gender dysphoria diagnosis, plaintiff began transitioning from male to female and legally changed her name. Plaintiff repeatedly asked to use her legal name at work and was denied. Following a series of discriminatory behavior from H & H's vice president, he ultimately fired plaintiff stating, "you do great work, but you are too much of a distraction." H & H moved for summary judgment, arguing that transgender status is not a cognizable claim under Title VII.

In an amicus curiae brief, the EEOC argued *Price Waterhouse* makes clear that transgender discrimination is cognizable as discrimination because of sex under Title VII. The Commission noted that numerous federal district courts have concluded that transgender discrimination is cognizable under Title VII. Additionally, the Commission argued that the defendant's reliance on the rationale in *Sommers* and *Ulane* is misplaced because the Supreme Court rejected the rationale in those cases. The Commission further argued that the Supreme Court in *Oncale* explicitly rejected the idea that Title VII only proscribes types of discrimination specifically contemplated by Congress. Furthermore, Congressional inaction does not exclude the plaintiff's claim under Title VII. Accordingly, the plain language of Title VII prohibits discrimination based on transgender status, and the court should hold that transgender discrimination is cognizable as sex discrimination under Title VII.

On September 15, 2015, the District Court denied H & H's motion for summary judgment. The court found that plaintiff pled facts sufficient to state a sufficient claim that H & H discriminated against her because of her sex in violation of Title VII. Notably, the court did not specifically address the Commission's argument. Instead, it based the analysis on gender non-conforming behavior, rather than status as a transgender individual. The court concluded that plaintiff provided ample evidence from which a reasonable juror could find that she was terminated because of her sex. The plaintiff carried her burden to show that H & H's proffered reason was pretext for sex discrimination.

- **Eure v. Sage Corp.**, (5th Cir. No. 14-51311) (amicus brief filed April 22, 2015). Plaintiff, a transgender individual, alleged that defendant violated Title VII by discriminating against him because of his sex/gender. Plaintiff stated that the defendant reduced his work hours because he is transgender. Further, plaintiff alleged that defendant cut his supervisor's pay as retaliation for hiring him. Plaintiff and his supervisor resigned as a result of defendant's conduct. Plaintiff appealed the district court's grant of summary judgment in favor of defendant. In granting summary judgment, the district court asserted that plaintiff presented evidence specifically on status as a transgender person, and not in terms related to conformance with gender stereotypes. The district court held that failure to present evidence showing that the discrimination was motivated by plaintiff's failure to act as a stereotypical woman fails to establish a cognizable gender stereotyping claim and cannot succeed in showing that the discrimination was "because of sex" under Title VII.

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In an amicus brief, the EEOC argued that the 5th Circuit should reverse the grant of summary judgment because the district court incorrectly interpreted the scope of Title VII's protections against discrimination "because of...sex." The Commission explained that a transgender plaintiff may state a claim for discrimination because of sex, if the defendant's action was motivated by the plaintiff's nonconformance with a sex stereotype or norm. The Commission further argued that a plaintiff asserting transgender discrimination need not provide specific evidence of gender stereotyping because "consideration of gender stereotypes will inherently be part of what drives discrimination against a transgendered individual." Additionally, the EEOC argued that the evidence presents a genuine dispute of fact, from which a reasonable jury could infer that defendant discriminated against the plaintiff because of his sex.

On August 26, 2015, the EEOC requested the circuit court to allow it to participate in oral arguments on behalf of the plaintiff. On September 17, 2015, the plaintiff withdrew his appeal.

- **Jamal v. Saks & Co.** (S.D. Tex. No. 4:14-cv-02782) (amicus brief submitted with motion for leave to file Jan. 22, 2015). Plaintiff, a transgender individual, alleged that defendant violated Title VII by harassing and discharging her because of her sex/gender. Plaintiff alleged that managers and co-workers referred to her using male pronouns, despite her requests to use female pronouns. Further, plaintiff alleged that management told her to change her appearance to a more masculine one, not to wear makeup or feminine clothing, and to separate her home life from her work life. She filed an EEOC charge and was fired ten days later. Defendant filed a motion to dismiss arguing that Title VII does not protect "transsexuals." Defendant further argued that plaintiff failed to comply with the administrative prerequisites to suit because her EEOC charge described her as a male yet her complaint used the pronoun "her." Finally, defendant argued that plaintiff could not state a claim for retaliation because she had no reasonable belief that the conduct she complained of violated Title VII.

In its proposed amicus brief, the EEOC argued that the district court should deny defendant's motion to dismiss and hold that discrimination against an individual because she is transgender violates Title VII. As it did in its amicus brief in *Lewis* (above), the EEOC explained that courts recognize that Title VII's prohibition on sex discrimination encompasses discrimination based on the failure to conform to gender expectations. Thus, discrimination against a transgender individual for non-conformance with gender norms is sex discrimination. Further, the EEOC contended, specific evidence of gender stereotyping is not necessary because consideration of gender stereotypes is inherently part of what drives transgender discrimination. Additionally, the EEOC argued, the district court should hold that plaintiff's EEOC charge satisfied the administrative prerequisite to a suit alleging transgender discrimination, as the discrimination alleged in the charge is the same discrimination as that alleged in the complaint. Finally, the EEOC urged the district court to hold that plaintiff's act of filing a charge with the EEOC and opposing conduct that a reasonable person would believe is unlawful is protected activity for purposes of a retaliation claim. The EEOC explained that Title VII's "participation clause" protects an individual from retaliation for filing a charge, without limitation (e.g., a showing that plaintiff's charge was filed "in good faith"). Plaintiff's "opposition clause" claim also should proceed because she could have a good faith, reasonable belief that transgender-based discrimination violates Title VII.

On January 26, 2015, Saks withdrew its motion to dismiss plaintiff's claim. On March 4, 2015, the parties filed a stipulation agreeing to dismiss the action with prejudice.

- **Lewis v. High Point Reg'l Health Sys.** (E.D.N.C. No. 5:13-cv-838-BO) (amicus brief filed Oct. 30, 2014). Plaintiff, a transgender female, alleges that defendant violated Title VII by failing to hire her in 2013 because of her sex/gender. Plaintiff alleges that during the interview process, she was interviewed by a group of peer nurses who ridiculed her regarding her sex. Defendant informed plaintiff that it was looking for someone with more experience. Although plaintiff had the qualifications for the position, she was not hired; rather, she alleges that an individual with less experience was hired for the position. Defendant filed a motion to dismiss arguing that Title VII does not prohibit "sexual orientation" discrimination.

In an amicus brief, the EEOC argued the district court should deny defendant's motion to dismiss and hold that failing to hire an individual because she is transgender violates Title VII. The EEOC explained that sexual orientation is a different concept altogether than transgender status or gender identity. The EEOC further explained that courts have recognized that Title VII's prohibition on sex discrimination encompasses discrimination based on the failure to conform to gender expectations. Thus, discrimination against a transgender individual for non-conformance with gender norms is sex discrimination. Further, the EEOC argued, specific evidence of gender stereotyping is not necessary because consideration of gender stereotypes is inherently part of what drives transgender discrimination.

On October 30, the district court granted the EEOC's motion for leave to file its amicus brief. The court noted that "[i]t is clear that this Court's ruling will implicate the interpretation and effective enforcement of Title VII, and therefore the EEOC has an interest in this matter. Further, as plaintiff is *pro se*, and the EEOC is the expert agency on the matter of Title VII, the EEOC's amicus brief will be of aid to the Court in its decisional process."

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On January 15, 2015, the district court denied defendant's motion to dismiss (as well as plaintiff's motion for summary judgment). The court noted that "[n]owhere in her complaint does plaintiff allege discrimination on the basis of sexual orientation." Further, the court concluded, "neither the Supreme Court nor the Fourth Circuit's Title VII jurisprudence has addressed transgender[] status, which, as amicus EEOC points out, is different than sexual orientation." The Court declined to resolve whether "plaintiff's complaint fits within a gender-stereotyping framework" since "the issue was not raised in defendant's motion to dismiss" See *Lewis v. High Point Regional Health System*, 79 F. Supp. 3d 588 (E.D.N.C. Jan. 15, 2015).

- **Chavez v. Credit Nation Auto Sales, LLC** (N.D. Ga. No. 1:13-cv-0312) (amicus brief filed June 5, 2014). Plaintiff worked as a mechanic for Credit Nation, a company that sells and repairs cars. In 2009, she informed her employer that she intended to transition from male to female. Some months later, she was terminated after a supervisor photographed her sleeping in a car during working hours. She then filed suit under Title VII, alleging that she was fired because of her gender. In moving for summary judgment, defendant argued that the plaintiff did not exhaust her administrative remedies because she failed to file a timely charge. The Commission filed an amicus curiae brief in the district court, limited to this issue. The Commission argued that the charge-filing limitations period should be tolled because before finally accepting the plaintiff's charge, EEOC had twice refused on the ground that "transgendered persons cannot file claims for sex discrimination under Title VII."

In ruling on the summary judgment motion, the district court rejected defendant's exhaustion argument. Without mentioning EEOC's brief, the court noted that the "limitations period under Title VII may be equitably tolled if the EEOC misleads a complainant regarding the nature of his or her rights." In the court's view that is what happened here. The court stated that "Title VII prohibits employers from discriminating against employees for failing to act and appear according to expectations defined by gender." (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989); *Glenn v. Brumby*, 683 F.3d 1312, 1316 (11th Cir. 2011)). The court reasoned that because the "very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior, . . . [d]iscrimination against a transgender individual because of the gender nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender." (citing *Brumby*, 683 F.3d at 1317) (adding that the "majority of federal courts" agree). Accordingly, the court concluded, "the EEOC misled [p]laintiff when it told [her] that she could not bring a claim for gender discrimination under Title VII," and, so, limitations on the claim "is required to be equitably tolled." The court went on to grant defendant's motion, however, finding no issue of fact as to whether the proffered reason for her termination - sleeping on the job - was pretextual. See 2014 WL 4585452 (N.D. Ga. Sept. 12, 2014).

On January 14th, 2016, the Eleventh Circuit issued a decision affirming the district court's ruling in favor of summary judgment for defendant on the issue of pretext, but reversed on the issues of (1) defendant's discriminatory intent, and (2) whether or not gender bias was a motivating factor in the termination decision, finding that plaintiff did present triable issues of fact. See *Chavez v. Credit Nation Auto Sales, LLC*, 2016 WL 158820 (11th Cir. Jan. 14, 2016).

The 11th Circuit held that plaintiff did not create a jury issue as to pretext because (a) she admitted to sleeping in her car on the clock, and (b) the defendant had previously fired a different employee for this same conduct. However, as to the termination, the court ruled that plaintiff presented sufficient evidence to demonstrate that gender bias was a motivating factor, including the skeptical attitude of her supervisor regarding her transition, instructions about how she was to dress at work and to and from work, her employer's concern about her gender expression as being disruptive, a bypassed disciplinary process that was supposed to precede any termination action, etc. See *Chavez*, 2016 WL 158820 at *6-9. The court stated that this issue should have survived summary judgment because it is enough that the plaintiff shows that "discriminatory animus existed and was at least 'a motivating factor.'" See *id.* at *8.

- **Pacheco v. Freedom Buick GMC Truck, Inc.** (W.D. Tex. Civ. No. 7:10-cv-00116) (amicus brief submitted as attachment with motion for leave to file Oct. 17, 2011; district court denied motion for leave to file Nov. 1, 2011). Plaintiff Alex Pacheco filed suit alleging that defendant Freedom Buick GMC Truck, Inc. discharged her because she is transgender and failed to conform to male gender stereotypes, and that this is discrimination because of sex in violation of Title VII. Freedom moved for summary judgment. The Commission sought to file an amicus curiae brief in which the Commission took the position that, as a matter of law, disparate treatment of an employee because she is transgender is discrimination because of sex. The amicus brief argued that this is so for at least two reasons: (1) under the reasoning of the Supreme Court's decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), discrimination against a transgender individual because he or she does not conform to gender norms or stereotypes is discrimination "because of . . . sex" under Title VII; and (2) following the reasoning in *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008), discrimination because an individual intends to change, is changing, or has changed his or her sex, is likewise prohibited by Title VII. The amicus brief also took the position that there were genuine issues of material fact that should preclude summary judgment on Pacheco's claim.

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The Commission filed a motion for leave to file this amicus brief in the district court, and attached a copy of the brief to this motion. Freedom opposed the EEOC's motion for leave to file. The district court entered an order denying Freedom's motion for summary judgment. Later, the district court entered a separate order denying the EEOC's motion for leave to file its amicus brief. However, the district court did not strike the EEOC's motion for leave to file (or the proposed amicus brief, which was attached to the EEOC's motion) from the public docket sheet for the case.

Sexual Orientation

- **Christiansen v. Omnicom Group, Inc.** (2nd Cir. No. 16-748) (amicus brief filed June 28, 2016). Plaintiff-Appellant Matthew Christiansen brought a Title VII lawsuit against Omnicom, alleging that his employer subjected him to a sexually hostile work environment by harassing him because he was gay and perceived as unmanly. The District Court for the Southern District of New York dismissed Christiansen's complaint for failure to state a claim. The court stated that it was "constrained" by binding circuit precedent, specifically *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2000) and *Dawson v. Bumble & Bumble*, 398 F.3d 211 (2d Cir. 2005). However, the court noted that the "broader legal landscape" has changed greatly since *Simonton*. Moreover, the court stated that drawing a line between discrimination based on sexual orientation and that based on sexual stereotyping was difficult. Yet, given that *Simonton* is still good law, the court was obligated to adhere to precedent.

Plaintiff appealed the decision to the Second Circuit. The EEOC filed an *amicus curie* brief in support of Christiansen, arguing that sexual orientation discrimination is cognizable as sex discrimination under Title VII. The EEOC outlined three theories under which Christiansen's claim can proceed. First, Title VII's prohibition on discrimination based on sex stereotypes extends to discrimination based on sexual orientation. Second, Title VII's prohibition on discrimination based on interracial associations extends to discrimination based on same-sex associations. Third, Title VII's prohibition on sex discrimination extends to discrimination based on sexual orientation.

Additionally, the EEOC argued that the Second Circuit should reconsider *Simonton* for two reasons: the legal underpinnings for the decision have shifted, and the rule that Title VII does not prohibit discrimination based on sexual orientation is outdated.

- **Evans v. Georgia Regional Hospital** (11th Cir. No. 15-15234) (amicus brief filed January 11, 2016). Plaintiff-Appellant Jameka Evans brought a Title VII lawsuit against her employer Georgia Regional Hospital claiming that she was discriminated and retaliated against because of her sexual orientation and her nonconformity to gender-based stereotypes. The district court for the Southern District of Georgia dismissed Evans' complaint for failure to state a claim on which relief may be granted. The district court concurred with the magistrate judge's report and recommendation, which stated that sexual orientation discrimination is not protected under Title VII. The magistrate judge explained that Title VII "was not intended to cover discrimination against homosexuals." Additionally, the magistrate judge said that Evans could not state a claim for retaliation because she could not have had a reasonable belief that she was opposing conduct made unlawful by Title VII. The district court conducted a de novo review of the record and, without any discussion, adopted the magistrate judge's report and recommendation and dismissed the complaint with prejudice.

In its amicus brief, the EEOC argued that Title VII's prohibition on sex discrimination encompasses a prohibition on discrimination because of sexual orientation. This is a question of first impression in the Eleventh Circuit. Consistent with *Baldwin v. Foxx*, EEOC Appeal No. 0120133080, 2015 WL 4397641 (EEOC July 15, 2015), the EEOC argued that sexual orientation discrimination is covered under Title VII because Title VII prohibits discrimination based on sex stereotypes, prohibits discrimination based on association, and prohibits employers from considering a plaintiff's sex.

The EEOC also argued that the district court erred in dismissing Evans's retaliation claim. First, the EEOC argued that in complaining about discrimination based on sexual orientation, Evans opposed conduct that was actually made unlawful by Title VII. Second, the EEOC argued that even if the Eleventh Circuit disagrees that sexual orientation discrimination is covered by Title VII, the statute shields not only employees who oppose acts that are illegal under the statute, but also employees who object in good faith to practices that they reasonably believe are illegal, even if they are not. Based on the Eleventh Circuit's precedent holding that Title VII prohibits discrimination against transgender individuals, coupled with the EEOC's well-publicized position that Title VII prohibits discrimination based on sexual orientation, Evans's belief that she was opposing unlawful conduct was objectively reasonable.

- **Burrows v. The College of Central Florida** (11th Cir. No. 15-14554) (amicus brief filed January 6, 2016). Plaintiff-Appellant Barbara Burrows filed a Title VII suit against her employer, The College of Central Florida, alleging that because of her sexual orientation, her employer did not renew her contract as an administrator and later eliminated her position as a professor as part of a series of cutbacks. The district court for the Middle District of Florida held that Burrow's claim of gender discrimination failed because it constituted a "repackaged" claim of sexual orientation discrimination, which is not prohibited under Title VII. Plaintiff appealed the decision to the Eleventh Circuit. The EEOC filed an amicus brief in support of Burrows, arguing

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that the district court's interpretation of Title VII is contrary to a growing consensus that sexual orientation discrimination claims involve (1) illegal sex stereotyping, (2) illegal gender-based associational discrimination, and (3) impermissible consideration of a plaintiff's sex. See Brief for U.S. Equal Employment Opportunity Commission as Amicus Curiae Supporting Appellant, *Burrows v. The College of Central Fla.*, at *7-8 (11th Cir. No. 15-14554). The Commission cited to the Eleventh circuit decision holding that non-conformity to gender stereotypes is a form of sex discrimination. See *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011). Thus, discrimination based on sexual orientation cannot be separated from an individual's sex, because the root of discrimination is that the individual discriminated against is not adhering to heterosexual concepts of behavior normative of each sex.

The EEOC further argued that discrimination based on sexual orientation also constitutes associational discrimination, because the individual is treated differently based on the sex of those with whom they associate. Race-based association discrimination has been prohibited under Title VII, and so it follows that this prohibition should apply to claims of sex-based association discrimination. Finally, the EEOC reiterated that the broad concept of sexual orientation cannot be understood without reference to an individual's sex; thus, any discrimination based on sexual orientation necessarily involves the impermissible consideration of an employee's sex.

- **Muhammad v. Caterpillar Inc.** (7th Cir. No. 12-173) (amicus brief filed October 9, 2014). Plaintiff-Appellant Warnether Muhammad filed this Title VII suit against his employer Caterpillar, Inc., alleging that his co-workers created a sex- and race-based hostile work environment. He also alleged that his supervisor unlawfully retaliated by suspending him after he complained about the harassment. The alleged harassment included anti-gay comments and conduct. The district court granted the defendant's motion for summary judgment on all claims. A panel of the U.S. Court of Appeals for the Seventh Circuit affirmed, in part on the grounds that Title VII does not prohibit sexual-orientation harassment, or retaliation against individuals who oppose it in the workplace. Muhammad petitioned for panel rehearing.

In an amicus curiae brief supporting the petition, the Commission argued that part of the panel's ruling rests on the sweeping proposition that Title VII's prohibition on discrimination "because of sex" does not prohibit discrimination based on sexual orientation. Yet an increasing number of courts, as well as the EEOC (the primary Agency charged with enforcing the statute), have recognized that intentional discrimination based on an individual's sexual orientation can be proved to be grounded in sex-based norms, preferences, expectations, or stereotypes. For example, in *Terveer v. Billington*, 2014 WL 1280301 (D.D.C. Mar. 31, 2014), the U.S. District Court for the District of Columbia held that a plaintiff's allegation that discrimination occurred because of "plaintiff's status as a homosexual" - without more - plausibly suggested the discrimination was based on gender stereotypes, and thus stated a Title VII sex-discrimination claim. Accordingly, Title VII's anti-retaliation rule protects individuals who in good faith oppose sexual-orientation discrimination in the workplace. The EEOC argued that for these reasons, the panel should modify the categorical statements to the contrary in its opinion, overruling the Circuit's precedent if necessary.

On October 16, 2014, the panel denied the petition for rehearing. But in a significant step, the panel issued an amended opinion removing its original rulings regarding the scope of Title VII coverage. The opinion no longer repeats or relies upon statements from prior Seventh Circuit decisions that Title VII does not prohibit sexual-orientation discrimination or retaliation for related opposition conduct. The revised panel opinion affirms the district court's summary-judgment for Caterpillar on other grounds, on which the Commission took no position. See 767 F.3d 694 (7th Cir. 2014), 2014 WL 4418649 (7th Cir. Sept. 9, 2014, as Amended on Denial of Rehearing, Oct. 16, 2014).

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Attachment C



U.S. Equal Employment Opportunity Commission

Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII

Supreme Court Decisions on the Scope of Title VII's Sex Discrimination Provision

Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998). The Supreme Court held that same-sex harassment is sex discrimination under Title VII. Justice Scalia noted in the majority opinion that, while same-sex harassment was "assuredly not the principal evil Congress was concerned with when it enacted Title VII . . . statutory prohibitions often go beyond the principal evil [they were passed to combat] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed. Title VII prohibits 'discriminat[ion] . . . because of . . . sex.' [This] . . . must extend to [sex-based] discrimination of any kind that meets the statutory requirements." *Id.* at 79-80.

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). The Supreme Court recognized that employment discrimination based on sex stereotypes (e.g., assumptions and/or expectations about how persons of a certain sex should dress, behave, etc.) is unlawful sex discrimination under Title VII. Price Waterhouse had denied Ann Hopkins a promotion in part because other partners at the firm felt that she did not act as woman should act. She was told, among other things, that she needed to "walk more femininely, talk more femininely, [and] dress more femininely" in order to secure a partnership. *Id.* at 230-31, 235. The Court found that this constituted evidence of sex discrimination as "[i]n the . . . context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender." *Id.* at 250. The Court further explained that Title VII's "because of sex" provision strikes at the "entire spectrum of disparate treatment of men and women resulting from sex stereotypes." *Id.* (quoting City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978) (internal citation omitted)).

Federal Court Decisions Supporting Coverage for Transgender Individuals as Sex Discrimination

G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd., 822 F.3d 709 (4th Cir. Apr. 19, 2016).), mandate recalled and stayed, 136 S. Ct. 2442 (Aug. 3, 2016), cert. granted, 2016 WL 4565643 (Oct. 28, 2016). The district court dismissed a Title IX sex discrimination claim brought by a transgender boy high school student who was denied access to the boys' restroom. Reversing and remanding the case for further proceedings, the Court of Appeals held: "At the heart of this appeal is whether Title IX requires schools to provide transgender students access to restrooms congruent with their gender identity," and the district court failed to give appropriate deference to the U.S. Department of Education's interpretation of how its own sex discrimination regulation should apply to transgender students. That interpretation was set forth in a January 15, 2015 letter from the Department's Office for Civil Rights, which advised: "When a school elects to separate or treat students differently on the basis of sex . . . a school generally must treat transgender students consistent with their gender identity." *See also Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 2:16-CV-524, 2016 WL 6125403 (S.D. Ohio Oct. 20, 2016); Students v. U.S. Dep't of Educ., No. 16-cv-4945, 2016 WL 6134121 (N.D. Ill. Oct. 18, 2016).

Glenn v. Brumby, 663 F.3d 1312 (11th Cir. 2011). The plaintiff, a transgender female, brought a claim under 42 U.S.C. § 1983 alleging unlawful discrimination based on sex in violation of the Equal Protection Clause when she was terminated from her position with the Georgia General Assembly. Relying on Price Waterhouse and other Title VII precedent, the court concluded that the defendant discriminated against the plaintiff based on her sex by terminating her because she was transitioning from male to female. The court stated that a person is considered transgender "precisely because of the perception that his or her behavior transgresses gender stereotypes." As a result, there is "congruence" between discriminating against transgender individuals and discrimination on the basis of "gender-based behavioral norms." Because everyone is protected against discrimination based on sex stereotypes, such protections cannot be denied to transgender individuals. "The nature of the discrimination is the same; it may differ in degree but not in kind." The court further concluded that discrimination based on sex stereotypes is subject to heightened scrutiny under the Equal Protection Clause,

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and government termination of a transgender person for his or her gender nonconformity is unconstitutional sex discrimination. Although in this case the defendant asserted that it fired the plaintiff because of potential lawsuits if she used the women's restroom, the record showed that the plaintiff's office had only single-use unisex restrooms, and therefore there was no evidence that the defendant was actually motivated by litigation concerns about restroom use. The defendant provided no other justification for its action, and therefore, the plaintiff was entitled to summary judgment.

Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004). The plaintiff alleged that he was suspended based on sex after he began to express a more feminine appearance and notified his employer that he would eventually undergo a complete physical transformation from male to female. The court held that Title VII prohibits discrimination against transgender individuals based on gender stereotyping. The court determined that discrimination against an individual for gender-nonconforming behavior violates Title VII irrespective of the cause of the behavior. The court reasoned that the "narrow view" of the term "sex" in prior case law denying Title VII protection to transgender employees was "eviscerated" by Price Waterhouse, in which the Supreme Court held that Title VII protected a woman who failed to conform to social expectations about how women should look and behave.

Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005). Plaintiff, who "was a male-to-female transsexual who was living as a male while on duty but often lived as a woman off duty [and] had a reputation throughout the police department as a homosexual, bisexual or cross-dresser," alleged he was demoted because of his failure to conform to sex stereotypes. The court held that this stated a claim of sex discrimination under Title VII.

Rosa v. Parks W. Bank & Trust Co., 214 F.3d 213 (1st Cir. 2000). Citing Title VII case law, the court concluded that a transgender plaintiff, who was biologically male, stated a claim of sex discrimination under the Equal Credit Opportunity Act by alleging that he was denied a loan application because he was dressed in traditionally female attire.

Schwenck v. Hartford, 204 F.3d 1187, 1201-02 (9th Cir. 2000). Citing Title VII case law, the court concluded that a transgender woman stated a claim of sex discrimination under the Gender Motivated Violence Act based on the perception that she was a "man who failed to act like one." The court noted that "the initial approach" taken in earlier federal appellate Title VII cases rejecting claims by transgender plaintiffs "has been overruled by the language and logic of Price Waterhouse."

Roberts v. Clark Cty. Sch. Dist., No. 2:15-cv-00388-JAD-PAL, 2016 WL 5843046 (D. Nev. Oct. 4, 2016). Expressly adopting the EEOC's holdings in Macy v. Dep't of Justice, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 20, 2012), and Lusardi v. Dep't of the Army, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Apr. 1, 2015), the court ruled that plaintiff, a transgender school police officer, was subjected to sex discrimination in violation of Title VII when he was told by his employer that he could not use either the men's or women's bathroom at work. See also Mickens v. General Electric Co., 2016 WL 7015665 (W.D. Ky. Nov. 29, 2016) (denying employer's motion to dismiss similar Title VII claim).

Fabian v. Hospital of Central Connecticut, No. 3:12-cv-1154, 2016 WL 1089178 (D. Conn. Mar. 18, 2016). Plaintiff, an orthopedic surgeon, brought a Title VII sex discrimination claim alleging she was not hired because she disclosed her identity as a transgender woman who would begin work after transitioning to presenting as female. Analyzing Title VII's legislative history and case law in extensive detail, the court held that Price Waterhouse abrogates the narrow view of Title VII's plain language that previously excluded sex discrimination claims by transgender individuals, citing supportive rulings by the 6th, 9th, and 11th Circuits, as well as the EEOC's decision in Macy. See also Adkins v. City of New York, 2015 WL 7076956 (S.D.N.Y. Nov. 15, 2015) (allowing equal protection claim by transgender individual to proceed under 42 U.S.C. Section 1983).

EEOC v. R.G. & G.R. Harris Funeral Homes, Inc., 100 F. Supp. 3d 594, 2015 (E.D. Mich. 2015). Denying the employer's motion to dismiss a Title VII sex discrimination claim brought on behalf of a terminated funeral home employee who was a transgender woman, the court held: "[I]f the EEOC's complaint had alleged that the Funeral Home fired Stephens based solely upon Stephens's status as a transgender person, then this Court would agree with the Funeral Home that the EEOC's complaint fails to state a claim under Title VII. But the EEOC's complaint also asserts that the Funeral Home fired Stephens 'because Stephens did not conform to the [Funeral Home's] sex- or gender-based preferences, expectations, or stereotypes' (Compl. at ¶ 15). And binding Sixth Circuit precedent establishes that any person without - regard to labels such as transgender - can assert a sex-stereotyping gender-discrimination claim under Title VII, under a Price Waterhouse theory, if that person's failure to conform to sex stereotypes was the driving force behind the termination. This Court therefore concludes that the EEOC's complaint states a claim as to Stephens's termination."

Lewis v. High Point Regional Health System, 79 F. Supp. 588 (E.D.N.C. 2015). Plaintiff, a certified nursing assistant, alleged she was denied hire for several positions because of her transgender status. At the time of her interviews, she was anatomically male, and was undergoing hormone replacement therapy in preparation for sex reassignment surgery in the future. The district court denied the employer's motion to dismiss the case because the employer had argued only that sexual orientation was not covered under Title VII and sexual orientation and

gender identity are two distinct concepts. The court therefore allowed plaintiff's transgender discrimination claim to proceed under Title VII.

Finkle v. Howard Cnty., Md., 122 Fair Empl. Prac. Cas. (BNA) 861, 2014 WL 1396386 (D. Md. Apr. 10, 2014). Denying the county's motion to dismiss or for summary judgment on a Title VII claim brought by a volunteer auxiliary police officer, the court ruled that the officer was an "employee" for Title VII purposes, and that her claim that she was discriminated against "because of her obvious transgendered status" raised a cognizable claim of sex discrimination. The court reasoned: "[I]t would seem that any discrimination against transsexuals (as transsexuals) - individuals who, by definition, do not conform to gender stereotypes - is proscribed by Title VII's proscription of discrimination on the basis of sex as interpreted by Price Waterhouse. As Judge Robertson offered in Schroer v. Billington, 577 F. Supp. 2d 293 (D.D.C. 2008), '[u]ltimately I do not think it matters for purposes of Title VII liability whether the Library withdrew its offer of employment because it perceived Schroer to be an insufficiently masculine man, an insufficiently feminine woman, or an inherently gender-nonconforming transsexual.'"

Parris v. Keystone Foods, 2013 WL 4010288 (N.D. Ala. Aug. 7, 2013), appeal dismissed, No. 13-14495-D (11th Cir. Dec. 26, 2013). Plaintiff, a transgender female, alleged that she was discharged from her job at a chicken processing facility because of her "gender non-conformity." The district court, citing Glenn v. Brumby, recognized that the plaintiff's claims were covered by Title VII's sex discrimination prohibitions, but granted summary judgment to the employer on the ground that plaintiff's comparator evidence and evidence of discriminatory remarks by coworkers did not show that her discharge was motivated by her gender identity as opposed to the legitimate non-discriminatory reason proffered by the employer.

Radtke v. Miscellaneous Drivers & Helpers Union Local #638 Health, Welfare, Eye, & Dental Fund, 867 F. Supp. 2d 1023 (D. Minn. 2012). Assessing a claim under ERISA for wrongful termination of benefits to a legal spouse of a transgender individual, the court quoted the language from Smith v. City of Salem that the Supreme Court's decision in Price Waterhouse "eviscerated" the "narrow view" of "sex" articulated in earlier Title VII cases, and observed: "An individual's sex includes many components, including chromosomal, anatomical, hormonal, and reproductive elements, some of which could be ambiguous or in conflict within an individual."

Schroer v. Billington, 577 F. Supp. 2d 293 (D.D.C. 2008). The plaintiff, a transgender female, was offered a position as a terrorism research analyst before she had changed her name and begun presenting herself as a woman. After the plaintiff notified the employer that she was under a doctor's care for gender dysphoria and would be undergoing gender transition, the employer withdrew the offer, explaining that the plaintiff would not be a "good fit." The court stated that since the employer refused to hire the plaintiff because she planned to change her anatomical sex by undergoing sex reassignment surgery, the employer's decision was literally discrimination "because of ... sex." The court analogized the plaintiff's claim to one in which an employee is fired because she converted from Christianity to Judaism, even though the employer does not discriminate against Christians or Jews generally but only "converts." Since such an action would be a clear case of discrimination "because of religion," Title VII's prohibition of discrimination "because of sex" must correspondingly encompass discrimination because of a change of sex. The court concluded that decisions rejecting claims by transgender individuals "represent an elevation of 'judge-supposed legislative intent over clear statutory text,'" which is "no longer a tenable approach to statutory construction."

Lopez v. River Oaks Imaging & Diagnostic Group, Inc., 542 F. Supp. 2d 653 (S.D. Tex. 2008). The plaintiff alleged that she was subjected to sex discrimination when the employer rescinded its job offer after learning that she was transgender. Denying the employer's motion for summary judgment, the court concluded that the plaintiff's claim was actionable as sex discrimination under Title VII on the theory that she failed to comport with the employer's notions of how a male should look. A finder of fact might reasonably conclude that the employer's statement that the job offer was rescinded because she had "misrepresented" herself as female reflected animus against individuals who do not conform to gender stereotypes.

Mitchell v. Axcan Scandipharm, Inc., No. 05-243, 2006 WL 456173, at *2 (W.D. Pa. 2006). Plaintiff alleged sex-based harassment and termination in violation of Title VII after the employer learned that plaintiff had been diagnosed with gender identity disorder and plaintiff began presenting at work as a female after having presented as a male during the first four years of employment. Denying the employer's motion to dismiss, the court held that because the complaint "included facts showing that his failure to conform to sex stereotypes of how a man should look and behave was the catalyst behind defendant's actions, plaintiff has sufficiently pleaded claims of gender discrimination."

Tronetti v. TLC HealthNet Lakeshore Hosp., No. 03-cv-375E, 2003 WL 22757935, at *4 (W.D.N.Y. 2003). Relying on the reasoning in Schwenck v. Hartford, 204 F.3d 1187, 1201-02 (9th Cir. 2000), the court ruled that plaintiff's sex discrimination claims of hostile work environment harassment and discriminatory discharge arising from her transition and sex reassignment surgery were actionable under Title VII, based on factual allegations that she was discriminated against for "failing to act like a man." See also Doe v. United Consumer Fin. Servs., No. 1:01-cv-1112, 2001 WL 34350174, at *2-5 (N.D. Ohio 2001).

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Creed v. Family Express Corp., 101 Fair Empl. Prac. Cas. (BNA) 609, 2007 WL 2265630 (N.D. Ind. Aug. 3, 2007). The plaintiff, a transgender female, alleged facts permitting an inference that she was terminated because of gender stereotypes; specifically, that she was perceived by her employer to be a man while employed as a sales associate and was fired for refusing to present herself in a masculine way. See also Hunter v. United Parcel Serv., 697 F.3d 697 (8th Cir. 2012) (affirming summary judgment for the employer under both Title VII and state law, the court did not rule that such discrimination was not actionable under Title VII, but rather that there was no evidence that the prospective employer knew or perceived that plaintiff was transgender during the job interview, and therefore a prima facie case of sex discrimination was not established).

Miles v. New York Univ., 979 F. Supp. 248, 249-50 (S.D.N.Y. 1997). Noting that the phrase "on the basis of sex" in Title IX is interpreted in the same manner as similar language in Title VII, the court held that a transgender female student could proceed with a claim that she was sexually harassed "on the basis of sex" in violation of Title IX.

Federal Court Decisions Supporting Coverage of Sexual Orientation-Related Discrimination as Sex Discrimination

Muhammad v. Caterpillar Inc., 767 F.3d 694 (7th Cir. Sept. 9, 2014, as amended on denial of rehearing, Oct. 16, 2014). Plaintiff alleged that hostile work environment harassment relating to his perceived sexual orientation was sex-based harassment in violation of Title VII. Affirming the district court's grant of summary judgment to the employer, the appellate court ruled that the employer took prompt remedial action once on notice of the harassment. As urged by the EEOC in an amicus brief filed in connection with plaintiff's petition for rehearing, the court denied the petition but amended its original decision to delete language that had stated sexual orientation-related discrimination claims are not actionable under Title VII.

Latta v. Otter, 771 F.3d 456 (9th Cir. 2014). The 9th Circuit Court of Appeals held that statutes and constitutional amendments in Idaho and Nevada prohibiting same-sex marriages and refusing to recognize same-sex marriages validly performed in other states violated the Equal Protection Clause. The opinion of the court held that the laws were invalid as they discriminated on the basis of sexual orientation without sufficient justification. It also noted that "the constitutional restraints the Supreme Court has long imposed on sex-role stereotyping . . . may provide another potentially persuasive answer to defendant's theory." Id. at 474. A concurrence by Judge Berzon focused exclusively on the sex discrimination argument. Her opinion stated that she would have found that the Idaho and Nevada laws unlawfully discriminated on the basis of sex as, among other reasons, "the social exclusion and state discrimination against lesbian, gay, bisexual, and transgender people reflects, in large part, disapproval of their nonconformity with gender-based expectations." Id. at 495.

Boutillier v. Hartford Public Schs., No. 3:13-cv-01303, 2016 WL 6818348 (D. Conn. Nov. 17, 2016). Plaintiff, an elementary school teacher, alleged that discrimination against her based on her sexual orientation violated Title VII's sex discrimination prohibition. The court denied the employer's motion for summary judgment, citing the pendency of the issue before the circuit's appellate court and mixed circuit precedent, as well as arguments it found persuasive in support of plaintiff's claim. The court reasoned that Title VII's plain language as well as precedent supported plaintiff's claim, concluding that "straightforward statutory interpretation and logic dictate that sexual orientation cannot be extricated from sex; the two are necessarily intertwined in a manner that, when viewed under the Title VII paradigm set forth by the Supreme Court, place sexual orientation discrimination within the penumbra of sex discrimination." See also Boutillier v. Hartford Public Schools, 2014 WL 4794527 (D. Conn. Sept. 25, 2014) (denying employer's motion to dismiss).

EEOC v. Scott Medical Health Center, P.C., ___ F. Supp. 3d ___, 2016 WL 6569233 (W.D. Pa. Nov. 4, 2016). The Commission alleged that harassment and constructive discharge based on the sexual orientation of a teleworker was actionable as sex discrimination under Title VII. Denying the employer's motion to dismiss, the court held that "Title VII's 'because of sex' provision prohibits discrimination on the basis of sexual orientation." The court explained: "There is no more obvious form of sex stereotyping than making a determination that a person should conform to heterosexuality. As the EEOC states, '[d]iscriminating against a person because of the sex of that person's romantic partner necessarily involves stereotypes about 'proper' roles in sexual relationship—that men are and should only be sexually attracted to women, not men.'" The court stated that in its view, a line between sex discrimination and sexual orientation discrimination is "a distinction without a difference. Forcing an employee to fit into a gendered expectation—whether that expectation involves physical traits, clothing, mannerisms or sexual attraction—constitutes sex stereotyping and, under Price Waterhouse, violates Title VII." The court concluded that such discrimination, "based upon nothing more than the aggressor's view of what it means to be a man or a woman, is exactly the evil Title VII was designed to eradicate."

Winstead v. Lafayette Cty. Bd. of Cty. Comm'rs, ___ F. Supp. 3d ___, 2016 WL 3440601 (N.D. Fla. June 20, 2016). Employee of county emergency medical services department brought Title VII sex discrimination claim alleging discrimination based on sexual orientation or perceived sexual orientation. Denying the employer's motion to dismiss, the court explained that it found persuasive the sex stereotyping rationale articulated in the EEOC's decision in Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015), and

observed: "To hold that Title VII's prohibition on discrimination 'because of sex' includes a prohibition on discrimination based on an employee's homosexuality or bisexuality or heterosexuality does not require judicial activism or tortured statutory construction. It requires close attention to the text of Title VII, common sense, and an understanding that '[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.'" (quoting Manhart, 435 U.S. at 707 n.13).

Christiansen v. Omnicom Group, Inc., 167 F. Supp. 3d 598 (S.D.N.Y. 2016), appeal pending. Holding that it was bound to apply circuit precedent disallowing Title VII sex discrimination claims based on sexual orientation, the court nevertheless included in its decision an extensive critique of that precedent and others, observing: "In light of the EEOC's recent [Baldwin] decision on Title VII's scope, and the demonstrated impracticality of considering sexual orientation discrimination as categorically different from sexual stereotyping, one might reasonably ask - and, lest there be any doubt, this Court is asking - whether that line should be erased."

Videckis v. Pepperdine University, 2015 WL 8916764 (C.D.Cal. Dec. 15, 2015). Pepperdine University filed a renewed motion to dismiss plaintiff's Title IX claim, stating that the plaintiff alleged sexual orientation discrimination and not sex discrimination. The district court denied the motion, explicitly holding that "sexual orientation discrimination is a form of sex or gender discrimination." The court cited with approval the Commission's decision in Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015), explaining that sexual orientation discrimination is sex discrimination "because it involved treatment that would not have occurred but for the individual's sex; because it was based on the sex of the person(s) the individual associates with; and/or because it was premised on the fundamental sex stereotype, norm, or expectation that individuals should be attracted only to those of the opposite sex."

Isaacs v. Felder, 2015 WL 6560655 (M.D. Ala. Oct.29, 2015). Granting the employer's motion for summary judgment on plaintiff's Title VII claim due to insufficient evidence of discriminatory intent on the facts of the case, the court nevertheless explicitly rejected arguments that sexual orientation discrimination cannot be challenged under Title VII: "This court agrees instead with the view of the Equal Employment Opportunity Commission that claims of sexual orientation-based discrimination are cognizable under Title VII. In [Baldwin], the Commission explains persuasively why 'an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII' ... Particularly compelling is its reliance on Eleventh Circuit precedent [prohibiting discrimination based on a protected characteristic because of a personal association]. Cf. Parr v. Woodmen of the World Life Ins. Co., 791 F.2d 888, 892 (11th Cir. 1986) ('Where a plaintiff claims discrimination based upon an interracial marriage or association, he alleges, by definition, that he has been discriminated against because of his race [in violation of Title VII].')' To the extent that sexual orientation discrimination occurs not because of the targeted individual's romantic or sexual attraction to or involvement with people of the same sex, but rather based on her or his perceived deviations from 'heterosexually defined gender norms,' this, too, is sex discrimination, of the gender-stereotyping variety See also Latta v. Otter, 771 F.3d 456, 486 (9th Cir. 2014) (Berzon, J., concurring) ('The notion underlying the Supreme Court's anti-stereotyping doctrine in both Fourteenth Amendment and Title VII cases is simple, but compelling: '[n]obody should be forced into a predetermined role on account of sex,' or punished for failing to conform to prescriptive expectations of what behavior is appropriate for one's gender. See Ruth Bader Ginsburg, 'Gender and the Constitution,' 44 U. Cin. L.Rev. 1, 1 (1975)."

Boutillier v. Hartford Public Schools, 2014 WL 4794527 (D. Conn. Sept. 25, 2014). The court denied the employer's motion to dismiss a Title VII sex discrimination claim alleging adverse employment actions occurring after management learned of her sexual orientation. The allegation that plaintiff was "subjected to sexual stereotyping during her employment on the basis of her sexual orientation" was held actionable as sex discrimination under Title VII because it sets forth "a plausible claim that she was discriminated against based on her non-conforming gender behavior."

Hall v. BNSF Railway Co., 2014 WL 4719007 (W.D. Wash. Sept. 22, 2014). Denying an employer's motion to dismiss a Title VII sex discrimination claim challenging the employer's policy of providing health insurance coverage for employees' legally married opposite-sex spouses but not same-sex spouses, the court found that the allegations were sufficient to allege discrimination based on the sex of the employee.

Terveer v. Billington, 2014 WL 1280301 (D.D.C. Mar. 31, 2014). Denying the employer's motion to dismiss the plaintiff's Title VII sex discrimination claims for denial of promotion and harassment because of non-conformance with sex stereotypes, the court found sufficient the plaintiff's allegations that he is "a homosexual male whose sexual orientation is not consistent with the Defendant's perception of acceptable gender roles," that his "status as a homosexual male did not conform to the Defendant's gender stereotypes associated with men [at his workplace]," and "his orientation as homosexual had removed him from [his supervisor's] preconceived definition of male."

Centola v. Potter, 183 F. Supp. 2d 403 (D. Mass. 2002). In dicta, the court explained: "Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact,

stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women."

Koren v. Ohio Bell Telephone Co., 2012 WL 3484825 (N.D. Ohio Aug. 14, 2012). Denying defendant's motion for summary judgment where plaintiff alleged his supervisor discriminated against him based on sex stereotypes because he is married to a man and took his husband's last name, the court held: "That is a claim of discrimination because of sex." (emphasis in original).

Heller v. Columbia Edgewater Country Club, 195 F. Supp. 2d 1212, 1224 (D. Or. 2002). In a Title VII sex harassment case brought by a lesbian employee who was subjected to negative comments about her sex life, the court stated that the belief that men or women should only be attracted to or date persons of the opposite sex constitutes a gender stereotype. "If an employer subjected a heterosexual employee to the sort of abuse allegedly endured by Heller-including numerous unwanted offensive comments regarding her sex life-the evidence would be sufficient to state a claim for violation of Title VII. The result should not differ simply because the victim of the harassment is homosexual." In this case, the court held, a jury could find that [the manager] repeatedly harassed (and ultimately discharged) Heller because Heller did not conform to Cagle's stereotype of how a woman ought to behave. Heller is attracted to and dates other women, whereas Cagle believes that a woman should be attracted to and date only men."

Strong v. Grambling State University, 2015 WL 1401335 (W.D. La. Mar. 25, 2015). The court analyzed on the merits plaintiff's claim that he was subject to sex discrimination in violation of Title VII based on his "gender status as heterosexual" because "women and homosexuals earn higher salaries than he does and receive pay increases where he does not." Granting the employer's motion for summary judgment, the court found there was insufficient evidence to support an inference of discriminatory intent.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1386

Page 1, line 2, remove "subsection 1 of section"

Page 1, line 3, remove "14-02.4-14,"

Page 1, line 3, remove "14-02.4-16,"

Page 2, line 14, after "6." insert "a."

Page 2, line 27, overstrike "a." and insert immediately thereafter "(1)"

Page 3, line 1, overstrike "b." and insert immediately thereafter "(2)"

Page 3, line 4, overstrike "c." and insert immediately thereafter "(3)"

Page 3, after line 9, insert:

"b. Notwithstanding subdivision a. "discriminatory practice" as it applies to an act or attempted act because of sexual orientation, does not apply to a discriminatory practice with regard to public accommodations under sections 14-02.4-01, 14-02.4-14, 14-02.4-16, or 14-02.4-19."

Page 3, line 25, remove ""Gender identity" means actual or perceived gender-related identity, appearance, or"

Page 3, remove lines 26 and 27

Page 3, line 28, remove "11."

Page 4, line 1, remove the overstrike over "11."

Page 4, line 1, remove "12."

Page 4, line 3, remove the overstrike over "12."

Page 4, line 3, remove "13."

Page 4, line 5, remove the overstrike over "13."

Page 4, line 5, remove "14."

Page 4, line 10, remove the overstrike over "14."

Page 4, line 10, remove "15."

Page 4, line 17, remove the overstrike over "15."

Page 4, line 17, remove "16."

Page 4, line 20, remove the overstrike over "16."

Page 4, line 20, remove "17."

Page 4, line 23, remove the overstrike over "17."

Page 4, line 23, remove "18."

Page 4, line 30, remove the overstrike over "~~18.~~"

Page 4, line 30, remove "19."

Page 5, line 1, remove the overstrike over "~~19.~~"

Page 5, line 1, remove "20."

Page 5, line 1, after the second underscored comma insert "or"

Page 5, line 2, remove ", or gender identity"

Page 5, line 3, replace "21." with "20."

Page 8, remove lines 18 through 27

Page 9, remove lines 7 through 16

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1386

Page 1, line 2, remove "subsection 1 of section"

Page 1, line 3, remove "14-02.4-14, sections 14-02.4-15, 14-02.4-16, and 14-02.4-17,"

Page 1, line 4, after the sixth comma insert "and"

Page 1, line 5, remove ", subsection 11 of section 26.1-04-03, subsection 1 of section"

Page 1, remove line 6

Page 1, line 7, remove "sections 26.1-47-04 and 27-09.1-02"

Page 2, line 14, after "6." insert "a."

Page 2, line 27, overstrike "a." and insert immediately thereafter "(1)"

Page 3, line 1, overstrike "b." and insert immediately thereafter "(2)"

Page 3, line 4, overstrike "c." and insert immediately thereafter "(3)"

Page 3, after line 9, insert:

"b. Notwithstanding subdivision a. "discriminatory practice" as it applies to an act or attempted act because of sexual orientation, does not apply to a discriminatory practice with regard to:

- (1) Public accommodations under sections 14-02.4-01, 14-02.4-14, 14-02.4-16, or 14-02.4-19;
- (2) Public services under sections 14-02.4-01 and 14-02.4-17; and
- (3) Credit transactions under sections 14-02.4-01 and 14-02.4-17."

Page 8, remove lines 1 through 29

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 8

Page 11, remove lines 30 and 31

Page 12, remove lines 1 through 29

Page 13, remove lines 1 through 4

Renumber accordingly