

TESTIMONY OF MICHAEL GEER
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Mr. Chairman, members of the committee. Thank you for the opportunity to speak before the House Judiciary Committee. My name is Michael Geer, and I am President of the Pennsylvania Family Institute, a non-profit, non-partisan research and educational institution based here in Harrisburg. We provide research and information to policy makers, the media and the public, and have a monthly newsletter that goes to nearly 10,000 Pennsylvania subscribers.

Today I would like to address House Bill 1353, which would amend Title 18 of the Pennsylvania Consolidated Statutes to include "sexual orientation" in defining the offense of ethnic intimidation. Such an amendment is contrary to good public policy, is unwarranted, and creates real concerns regarding freedom of speech and expression and equal protection under the law.

Let me state at the outset my condemnation of any crime, physical attack, verbal intimidation or other hateful acts committed against anyone as a result of their race, ethnicity, religion or sexual behavior or for that matter, for any reason. Those responsible for the commission of a crime should be prosecuted and punished.

I begin with the issue of freedom of speech and expression and equal protection under the law. The existence of hate crime legislation, and the proposed inclusion of "sexual orientation" has raised controversy and civil liberty concerns even among prominent groups such as the American Civil Liberties Union. Hate crime laws have begun to hit the courts as civil libertarians charge that

defendants are being unlawfully punished for constitutionally protected speech. Nadine Strossen, president of the American Civil Liberties Union says the problem arises when punishment for a certain crime increases when the crime is motivated by bias. Such is the case with this hate crime legislation. Said Ms. Strossen:

"Since you have the same two acts, but two different penalties, it seems you can say a certain percentage of the penalty is attributable only to expression. That obviously creates difficulties in terms of free speech."

While the ACLU has not taken an official position on this issue, Ms. Strossen has also raised concerns about the fact that hate-crime laws can also discriminate against certain non-protected classes.

Again, to quote her:

"Suppose someone smashes another person on the head with a brick that says 'I hate you because you're ... stupid or fat or a Republican.' That would not garner punishment. These laws have equal protection problems because only certain kinds of ill will is selected for punishment."

In other words, the equal protection guarantee of the Fourteenth Amendment to the Constitution is transgressed by providing extra penalties only when crimes are motivated by certain strains of hatred. Is a person who robs and beats an elderly woman somehow guilty of a lesser crime than one who robs and beats a homosexual man? Most Americans, and most Pennsylvanians, I believe, would say no. To make the same point by using the words from a newspaper column, "little can be said on behalf of laws that make a felony out of menacing a sumo wrestler, but consider it no more than a misdemeanor to terrorize an old man no longer capable of self-defense." The law should protect all people equally.

Perhaps the most serious abuse of this type of legislation is its use of the coercive power of the state to judge motives of the heart. Hate may be a sin, but it is not a crime. The distinction, for civil

purposes, between beliefs and actions is the foundation of American civil and religious liberty. According to the common law, the state only has jurisdiction over actions-- not beliefs. If hate or prejudice is made a crime, the freedom of conscience is rendered meaningless because our moral obligation to discriminate between good and evil will have been surrendered to the state.

Another related issue to equal protection and freedom of expression is the additional burden placed on prosecutors to determine what motives were behind a particular criminal act.

THIS AMENDMENT IS UNWARRANTED. As it currently stands, Pennsylvania's ethnic intimidation law follows the traditional and logical understandings of protected classes. With the proposed addition of "sexual orientation" to that list, homosexuality is being analogized and brought on a level plane with issues such as race and gender, and national origin. The analogy is not a good one, however. First, there is no basis in Constitutional Law or Supreme Court precedent to grant "sexual orientation" the same heightened scrutiny accorded legitimate protected classes. Historically, courts and civil rights authorities have employed three "touchstones" in awarding special protected status to disadvantaged minority classes. They are:

- 1) A history of discrimination evidenced by a lack of ability to obtain economic mean income, adequate education or cultural opportunity.
- 2) Specially protected classes should exhibit obvious, immutable or distinguishing characteristics, like race, color, gender, or national origin that define them as a discrete group.
- 3) Protected classes should clearly demonstrate political powerlessness.

This is not the case regarding sexual orientation.

For example, people of color cannot leave their color behind the way many homosexuals are leaving their homosexuality behind.

The main reason that this analogy breaks down is that all classes traditionally protected by human rights statutes share a common immutable *trait* or *status* which a person did not choose, while homosexuals share a common *behavior* which they did choose. (Religion, which is a protected status under civil rights statutes, may be perceived to be a chosen behavior, but is explicitly protected by the first amendment.) There is no more logic to granting such protection to homosexuals than there would be to granting it to other behavior-based groups such as smokers, joggers, or homemakers.

Some homosexuals have argued that they are "born that way" and they cannot alter their behavior. However, such statements go against substantial scientific evidence to the contrary. There is no convincing evidence that homosexuality is genetic, and much evidence that those motivated to do so can change their behaviors. Indeed, most biologists, psychologists and researchers believe that homosexual habits are learned and are not innate. In fact, a survey of homosexuals revealed that only 9 % of them believe they were "born that way." Therefore, including "sexual orientation" as a protected class wrongly puts behavior on a par with innate characteristics such as race or ethnicity -- and thereby devalues those traditional classes much deserving of protection against discrimination.

Homosexuals have the same legal rights that all individuals have currently under the law. These include the Bill of Rights that encompass such protections as freedom of speech, association, religious practice, due process of law, enforcement of contracts, use of the courts, and equal protection of the law. They can form

lobbyist organizations, incorporate, form student organizations , obtain tax deduction status, and publicly assemble, rally, petition, and carry out all forms of political activism in support of their political ideas. Indeed, the American Civil Liberties Union has published a book of close to 200 pages detailing the rights of homosexuals under existing law.

Though homosexuals many times are socially ostracized, there is no evidence of negative disparity of incomes, cultural opportunities or education. Indeed, just the opposite appears true. A 1990 demographic analysis by Simmons Market Research Bureau showed gay individual's incomes average about \$36,800, while gay households average \$55,400-- against the average U.S. household income of \$36,500. In other words, the average U.S. homosexual individual earns more than the average U.S. household. This is hardly evidence of job discrimination such as that historically faced by blacks, Hispanics and women -- in fact, it argues that discrimination is not taking place.

With regard to what is referred to as "gay bashing" or assaults on homosexuals -- there is no question that such outrages do take place. But there is currently law exists to punish the bashing of anyone, homosexual or otherwise. and those laws should be fully enforced. Criminal physical or verbal abuse of anyone should not be condoned or go unpunished. I do question however, the statistics that are being employed to promote the inclusion of sexual orientation in bias crime statutes. A 1988 *Washington Post* article listed the hate crime figures provided to the *Post* by the National Gay and Lesbian Task force for hate crimes committed in the District of Columbia.

The Post reports 243 incidents of anti-homosexual crimes for the year 1987, but a closer look at those figures shows that 147 of the crimes were verbal. The statistics included 147 incidents of name calling. 41 additional crimes were arrests by police. In Virginia, the Post article went on to say, there were 462 anti-homosexual crimes, but 423 of these were incidents of name calling. With that kind of reporting, is it any wonder that homosexuals report more acts of "violence" directed against them than any other group?

The 1988 report of the National Gay and Lesbian task force admits that almost 80 percent of hate crimes against homosexuals were acts of name calling. In fact, they reported a total 885 cases of physical violence in the entire country. Now, if you take the homosexual argument that they represent 10 percent of the population at face value, and I do not, but for the sake of argument, 885 crimes is a very small number relative to their percentage of the population. It is certainly not remarkable compared to the level of violence perpetrated in this country against women, the elderly, children and police. Again, physical violence against anyone should not be condoned and must be punished. But to grant the special protection to people based on their behavior as HB 1353 is unwise, unfair, and contrary to good law. The reality is that homosexual-rights groups see the inclusion of "sexual orientation" in hate-crime legislation as the first step in a political movement to gain special privileges in a wide range of laws dealing with discrimination, marriage, families and children etc... To quote the National Gay and Lesbian Task Force after the federal Hate-Crimes reporting act was passed, "It's a landmark, because it's the first time a bill containing sexual

orientation has ever been passed." That is the aim with this legislation here in Pennsylvania.

THE AMENDMENT IS UNFAIR

Granting homosexuals the "special protection" they seek means other people will lose their rights. Homosexual behavior has historically been morally condemned by most of civilization, whereas race, sex and national origins are morally neutral. As the U.S. Supreme Court recently pointed out, "To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching." Will the restriction on speech that exists in this bill result in hate-crimes prosecution of Pastors or others who speak out against homosexuality? To quote columnist William Raspberry, "Will a group that sponsors a Louis Farrakhan speech that attacks Jews be guilty of a hate-crime?" What about a brochure printed by a homosexual organization in Pittsburgh that urges harassment of people who oppose their lifestyle, and encourages people to dial 800-numbers and order information to quote, "waste their money." This is certainly hateful, but it is not a crime.

CONCLUSION I and the Pennsylvania Family Institute urge you to reject the proposed legislation. To reiterate, physical violence, harassment and terrorism against anyone should not be condoned, and is prohibited. It is illegal today in Pennsylvania to punch, rob or break the window of a homosexual or anyone else. That is as it should be. But the state should not be in the business of judging the motives of the heart, or the expression of ideas.