



EXHIBIT 4  
DATE 1/14/05  
HB 240

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### HB 240 TESTIMONY SUBMITTED 1/14/2005

The American Civil Liberties Union respectfully submits this statement to urge the House Judiciary Committee to respond by legislation to the continuing problem of an inadequate state and local response to criminal civil rights violations, but also to request that the Committee include a specific provision in HB 240 that limits any potential chilling effect on constitutionally protected speech.

The ACLU believes that the legislature can and should expand jurisdiction to prosecute criminal civil rights violations when local governments are unwilling or unable to prosecute, while also precluding evidence of mere abstract beliefs or mere membership in an organization from becoming a basis for such prosecutions.

The ACLU has a long record of support for stronger protection of both free speech and civil rights. Those positions are not inconsistent. In fact, vigilant protection of free speech rights historically has opened the doors to effective advocacy for expanded civil rights protections.

Several years ago, the ACLU submitted a brief to the Supreme Court urging the Court to uphold a Wisconsin hate crime sentencing enhancement statute as constitutional. However, the ACLU also asked the Court "to set forth a clear set of rules governing the use of such statutes in the future." The ACLU warned the Court that "if the state is not able to prove that a defendant's speech is linked to specific criminal behavior, the chances increase that the state's hate crime prosecution is politically inspired." The draft amendment described in this statement will help avoid that harm.

The ACLU strongly urges the committee to amend HB 240 to limit its potential chilling effect on constitutionally protected speech. A change to the proposed language that we offer as a friendly amendment would provide that:

**Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this section shall affect the rules of evidence governing the impeachment of a witness.**

This language will reduce or eliminate the possibility that the ~~state~~ government could obtain a criminal conviction on the basis of evidence of speech that had no role in the chain of events that led to any alleged violent act proscribed by the statute. Put another way, it better ensures that the law punishes discrimination (an act), not bigotry (a belief).

This proposed provision exactly copies a paragraph in the Washington State hate crimes statute. Wash. Rev. Code § 9A.36.080(4). This Washington State language is not new; the paragraph was added to the Washington State statute as part of an amendment in 1993. The ACLU has conferred with litigators involved in hate crimes prevention in Washington state, who report no complaints that the provision inappropriately impedes prosecutions.

Please favorably consider passage of HB 240 with the suggested amended language to help fulfill our Montana Constitutional guarantees to human dignity and the equal protection of the law. Thank you for your time and thoughtful deliberations.

