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SENATE EDUCATION

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SB 198, Senate Education Committee
Hearing 1/17/05
Testimony in support of the bill

Mr. Chairman, members of the committee, my name is Jennifer Hendricks. I am a member of the board of Pride, Montana's gay and lesbian civil rights organization, and I am a mother concerned about the future well-being of my two-year-old boy. I am also a plaintiff's lawyer, and that is the perspective I'd like to offer you today.

This bill includes a model anti-harassment policy that schools would have to adopt. Opponents of the bill have argued that the model policy should not include a ban on harassing gay kids. One of the reasons the opponents offer is that the Montana School Boards Association has told school districts they should delete "sexual orientation" from their anti-harassment and anti-discrimination policies. The supposed reason for this is fear that adopting a policy against hurting gay kids would show that schools were aware of the problem of anti-gay harassment and that, by acknowledging they knew of the problem, would expose themselves to lawsuits. This argument not just morally wrong; it is utterly, completely wrong in its legal rationale.

I represent a lot of people who have been the victims of discrimination or harassment. If a student is harassed by other students and brings a case against the school, there are two things you have to prove. One is that the bullying actually happened. The other is that the school was at fault and should be held responsible for the bullying. That is not always the case, and even when it is, it is very difficult to prove.

What you need to know about this bill is that the number-one defense a school can have is that it did what it could to prevent the harassment. The number-one way to do this is by showing that the school adopted a policy that was as detailed and explicit as possible in prohibiting harassment. Taking "sexual orientation" out of this bill, or even not passing the bill at all, wouldn't make lawsuits any less likely. In fact, it would make them more likely because it would show that when the state had a chance to address the problem, it declined. It would also make schools more likely to lose when lawsuits are brought.

By contrast, anything a school does to make schools *safer* for kids is also going to translate into making schools less exposed to liability. If you act according to what I think is your main goal, to protect kids, you will automatically protect schools from lawsuits because fewer kids will get hurt and because the model anti-harassment policy will create an assumption by judges that the schools have taken important steps to protect students.

Some of the opponents of this bill will also tell you that no specific types of bullying, like bullying of gay students, should be mentioned in the policy, supposedly because to do so would suggest that other kinds of bullying are okay. That argument is ridiculous, and no one could read this model policy and think that. If schools have only a general policy against bullying instead of a policy that also includes a specific ban against the well-known problem of anti-gay harassment, the courts are not going to be convinced that the school was doing all it could to protect gay kids.

I should add that as a plaintiff's lawyer who specializes in harassment, it's in my narrow self-interest for you to weaken this bill. If you strike "sexual orientation" from the model policy, it's going to mean more business for my law firm. I do not want that business. I would much rather you do the right thing, ignore the lawyers' paranoia that the School Board Association is feeding schools, and do what's right for kids by passing this bill. Thank you.