

**RE: Hate Crime and Public  
Order (Scotland) Bill  
[Consultation Submission]**

27 May 2020

## *Introduction*

1. Christian Legal Centre is a leading legal advocacy group in the United Kingdom dedicated to the protection of religious liberty. We acted as counsel of record for several of the applicants in the seminal case of *Ewedia and Others v. the United Kingdom*, and have taken part in many of the precedent setting cases involving freedom of thought, conscience, and religion in the United Kingdom; a number of those cases dealing with the punishment of religious expression. Christian Legal Centre's cases are frequently covered by British print and broadcast media.
2. The author of this submission, Roger Kiska, is both a solicitor in England and Wales and a member of the Michigan State Bar in the United States, with more than 17 years legal experience. He has been involved in over 30 cases before the European Court of Human Rights including numerous victories as lead counsel or co-counsel<sup>1</sup>. Kiska has also litigated before the Grand Chamber of the Court of Justice of the European Union. He served a 2-year term as an elected member of the Advisory Panel of the Fundamental Rights Agency of the European Union. Kiska has published 11 scholarly journal articles in 5 languages in 9 different countries on issues involving religious liberty and/or freedom of expression, as well as several chapters in academic books. His published works on freedom of expression include:
  - Roger Kiska and Paul Coleman, *Freedom of Speech and "Hate Speech"*, 5 International Journal for Religious Freedom 129 (2012);
  - Roger Kiska, *Hate Speech: A Comparison Between the European Court of Human Rights and the United States Supreme Court Jurisprudence*, 25 Regent U.L. Rev. 107 (2012-2013).
  - Kiska, Roger. 'The Principles of Newspeak: Regulation of "Hate" in the United Kingdom'. *Freedom of Speech: A Comparative Law Perspective*, edited by Grzegorz Blicharz et al, IWS, 2019, pp. 349-404.

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<sup>1</sup> ECHR, *Altinkaynak and Others v. Turkey*, application no. 12541/06, judgment of 15 January 2019; ECHR, *Case of Dimitrova v. Bulgaria*, application no. 15452/12, judgment of 10 May 2015; ECHR, *Case of Magyar Keresztesy Mennonita Egyház and Others v. Hungary*, Application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56858/12, judgment of 8 April 2014; ECHR, *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, Application Nos. 412/03 and 35677/04, judgment of 16 December 2012; ECHR, *Case of Schmidt v. France*, Application No. 35109/02, judgment of 26 July 2007; ECHR, *Affaire Tanyar et Kucukergin c. Turquie*, application no. 74242/01, judgment of 05 December 2006.

## *Hate Crime and Public Order (Scotland) Bill*

3. On 23 April 2020, the *Hate Crime and Public Order (Scotland) Bill* was introduced by the Scottish government. While the bill abolishes the common law offence of blasphemy, which the government notes has not been prosecuted in Scotland for over 175 years, it nonetheless creates a new type of blasphemy law in relation to the protected characteristics. Part 1 makes provision relating to the aggravation of offenses by prejudice. Part 2 of the bill creates a new offence for stirring up hatred in relation to the enumerated protected characteristics (age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics). While Sections 11 and 12 of the Bill create exceptions for speech which criticises or discusses religion or sexual orientation, those exceptions do not apply where the speech involved is deemed to be abusive or threatening. Section 14(7) of the proposed bill creates a protected characteristic for gender identity, thus going well beyond the protections afforded both by the Equality Act 2010 and Gender Recognition Act 2004.

### *Overview*

4. As a starting point, it is important to recognise the fundamental nature of freedom of expression. In a later section of this submission, we will examine the protections afforded to speech pursuant to the Human Rights Act 1998. Here, however, it is important to examine the underlying flaws inherent in the regulation of so-called ‘hate’ speech. ‘Hate’ speech laws are often premised, as they are with the instant legislation, on the unsubstantiated assertion that there is a cause and effect relationship between speech and social harm. Such laws are further premised on a second faulty premise; that being that prejudice is so prevalent and insidious in that given jurisdiction that criminal sanction becomes a necessary encumbrance on free speech. Moving on from these premises, they seek to criminalise speech believing that this will act as a deterrent against prejudice. However, history has proven that ‘hate’ speech laws, in fact, have never had such an effect.
5. During the Weimar Republic, before the National Socialist Party had formally risen to power, the criminal code had several provisions relating to ‘hate’ speech, insult and stirring up racial hatred.<sup>2</sup> In fact, leading Nazi propaganda figures such as Joseph Goebbels and Julius Striecher were successfully prosecuted for making anti-Semitic remarks.<sup>3</sup> Similarly, the Former Yugoslavia used Article 134, ‘*Inciting national, racial or religious hatred, discord or hostility*’<sup>4</sup> to prosecute incitement to hatred and other speech the courts deemed hateful. Not only were the measures ineffective in both Weimar Germany and the Former Yugoslavia, an argument can be made that such laws actually facilitated the rise of nationalism by giving a platform to radical figures by making them veritable folk heroes of their respective propaganda movements.
6. Furthermore, hate is oftentimes subjective. This is all the truer in relation to matters of personal identity or belief. Biggs J. stated it well in *Smith v. Trafford Housing Trust* [2012]

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<sup>2</sup> See e.g.: §§130, 186-187 (StGB). For an excellent treatment on the failure of ‘hate’ speech laws from preventing the rise of anti-Semitism in Germany, see: Cyril Levitt, *The Prosecution of Antisemites by the Courts in the Weimar Republic: Was Justice Served?* 36 LEO BAECK INST. Y.B. 151-67 (1991).

<sup>3</sup> See e.g.: Roger Manvell and Heinrich Fraenkel, *Doctor Goebbels: His Life and Death*, Skyhorse Publishing Inc., 2010.

<sup>4</sup> *Yugoslavia: Criminal Code of the Socialist Federal Republic of Yugoslavia* [], 1 July 1977.

EWHC 3221 (Ch), para. 82: “*The frank but lawful expression of religious or political views may frequently cause a degree of upset, and even offence, to those with deeply held contrary views, even where none is intended by the speaker. This is a necessary price to be paid for freedom of speech.*”

7. This problem is reflected in the draft bill. Criminality is determined by how the ‘victim’ perceives the statement, not by the actual intent of the speaker. Making innocence a rebuttable presumption strikes at the very heart of judicial fairness. The political correctness that often permeates culture also provides a poor hermeneutic for judging intent and/or hate. The fact that merely “showing” or “making the material available” is enough to attract criminal prosecution, regardless of intent, is a misuse of the criminal justice system and a weight on the public consciousness that no citizen of Scotland should have to bear.
8. The Christian Legal Centre is equally concerned with Section 6 of the Bill, which empowers a sheriff or justice of the peace, if they believe reasonable grounds exist, to issue a warrant to search the premises of anyone suspected of having committed, who are committing, or who may have evidence within their premises of, offenses under Sections 3 (*Offenses of stirring up hatred*) and 5 (*Offenses of possessing inflammatory material*) of the Bill. We believe that the threshold is too low, and the freedom interfered with too fundamental to justify such heavy-handed measures. The search of any private premises must be ‘proportionate’ to the aim pursued by the search<sup>5</sup> and must be ‘necessary in a democratic society’ to achieve that aim.<sup>6</sup> The term ‘necessary’ does not have the flexibility of such expressions as ‘useful’ or ‘desirable’.<sup>7</sup> The test for necessity would be comparable to the ‘least restrictive means’ test”.<sup>8</sup> Given the importance of freedom of expression to a democratic society and the substantive nature of the right to respect for privacy and family life, home and correspondence to the integrity of the rule of law, any such search warrant would be a disproportionate interference with Convention Rights as defined by Articles 8 and 10.

### *Gender Identity*

9. The subjectivity and privacy risks involved makes the extension of the definition of gender identity in the proposed bill all the more troubling. First and foremost, respectable minds can disagree about gender theory. This leaves those who disagree with the assumption that one’s perceived gender identity, regardless of any other circumstances, dictates that person’s gender, at a risk of criminal prosecution if they unartfully express their beliefs. Moreover, while exemptions are written into the bill allowing for some level of criticism of other religions or sexual orientation, no such allowance is made in relation to gender identity. Given how contentious this area is culturally, this failure poses a real challenge to actual public debate about a genuinely contentious issue while also posing an authentic threat to freedom of speech.

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<sup>5</sup> *McCleod v. the United Kingdom*, application no. 24755/94, judgment of 23 September 1998, §§53-57.

<sup>6</sup> *Camenzind v. Switzerland*, application no. 21353/94, judgment of 16 December 1998 §47.

<sup>7</sup> *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01 para. 116 (Eur. Ct. H.R. June 14, 2007).

<sup>8</sup> *Cf.* Lord Mance in *Nicklinson v Ministry of Justice* [2014] UKSC 38, at para 168 in relation to the margin of appreciation to be afforded to the legislature when applications for Judicial Review are lodged.

10. It is important here to note that the Gender Recognition Act 2004 requires that anyone being issued a gender recognition certificate first receive evidence of gender dysphoria, provided either by a medical practitioner practising in the field of gender dysphoria or a chartered psychologist in the field.<sup>9</sup> This is for good reason. Looking at the Diagnostic and Statistical Manual for Mental Disorders' diagnosis for gender identity disorder, which has many of the same substantive diagnostic attributes as gender dysphoria, we see a staggering amount of co-morbidities attributed to gender confusion.<sup>10</sup> The suggestion that speech critical of the belief that someone may not change genders may attract criminal culpability, even where a significant portion of those who are gender confused exhibit the confusion as a result of an accompanying co-morbidity, is an offense to the rule of law.
11. Second, it is a mainstream conservative Christian belief that God created humankind in His image, male and female; biologically and sexually different but with equal personal dignity. That belief also suggests that any repudiation of one's biological sex and any attempt to physically change, alter or disavow one's biological sex from conception as proscribed by God's Word and creation order is sinful. Similar views are held by many other religions and philosophical traditions. The proposed definition of gender identity in the bill is both vexatious and poses a significant threat to freedom of religion or belief.
12. Finally, the bill intimates that failure to use a person's desired pronouns, may amount to incitement of hatred. This is nothing short of compelled speech by threat of criminal penalty. Speech compelled by law is poison to freedom of expression. In essence, this proposal is a content-based restriction on speech without persuasive evidence that it serves a compelling enough government need to limit freedom of expression. It does nothing but erode the fundamental nature of Convention rights and the long tradition of freedom enjoyed in the United Kingdom.<sup>11</sup>

### *Human Rights Act 1998*

13. The European Court of Human Rights ["ECHR"] has repeatedly held that "freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfillment."<sup>12</sup> The ECHR has also held on numerous occasions that freedom of expression must be safeguarded. The court has explicitly stated that freedom of expression protects not only the "information" or

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<sup>9</sup> *Gender Recognition Act 2004 (c.7)*, §3(1)(a-b).

<sup>10</sup> These comorbidities include mood disorders such as major depression and dysthymia; substance related disorders such as sedative dependence or cannabis dependence; anxiety disorders such as panic disorder, agoraphobia, social phobia, specific phobia, generalised anxiety disorder, and posttraumatic stress disorder; and somatoform disorders such as undifferentiated somatoform disorder, pain disorder, and body dysmorphic disorder; schizophrenia and other psychotic disorders such as schizophrenia disorder and psychotic disorder otherwise not specified; and eating disorders such as anorexia nervosa. American Psychiatric Association, "Gender Dysphoria," *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, [DSM-5], Arlington, VA, American Psychiatric Association, 2013, 452.

<sup>11</sup> *Cf. Reed v Town of Gilbert*, 135 S. Ct. 2218 (2015), where the United States Supreme Court strikes down the notion of "professional speech", which in essence is a speech code governing admission to certain professions. The fact that the instant bill takes the sanction one step further, into the realm of criminal law, strains credulity.

<sup>12</sup> E.g., *Dichand v. Austria*, App. No. 29271/95 § 37 (Eur. Ct. H.R. Feb. 26, 2002), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60171>; *Marônek v. Slovakia*, 2001-III Eur. Ct. H.R. 337, 349; *Thoma v. Luxembourg*, 2001-III Eur. Ct. H.R. 67, 84; see also *Şener v. Turkey*, App. No. 26680/95 § 39(i) (Eur. Ct. H.R. July 18, 2000), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58753>; *Lingens v. Austria*, 103 Eur. Ct. H.R. 11, 26 (1986).

‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also [protects] those that offend, shock or disturb . . . . Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society.’”<sup>13</sup>

14. While freedom of expression is subject to exceptions in Paragraph 2 of Article 10, these exceptions “must, however, be construed strictly, and the need for any restrictions must be established convincingly.”<sup>14</sup> In determining limitations on freedom of expression, it is paramount that public authorities maintain a sense of strict neutrality and not be allowed to make distinctions between persons holding one opinion over another. Any such distinctions would be contrary to the principles of democracy, which have been so bravely defended throughout the recent history of Europe.<sup>15</sup>
15. This principle is also central to U.S. jurisprudence, being defined as viewpoint discrimination. In *Rosenberger v. Rector & Visitors of University of Virginia*, the Court stated, “*The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.*”<sup>16</sup> Content refers to topic; viewpoint refers to opinion. Therefore, while a content-based restriction calls for heightened scrutiny, a viewpoint-based restriction is altogether impermissible.<sup>17</sup> An exclusion premised on religion often targets viewpoint, not content, and is improper for this reason. The Supreme Court in *Good News Club v. Milford Central School* stated, “[S]peech discussing otherwise permissible subjects cannot be excluded . . . on the ground that the subject is discussed from a religious viewpoint.”<sup>18</sup>
16. The issue of constraints on speech and opinion has risen to prominence in Europe in recent years. The prevalence of high-profile ‘hate’ speech cases, running the gambit from criticism of Islam<sup>19</sup> to criticism of homosexual behavior<sup>20</sup>, has led to robust discussion at the domestic and intergovernmental level regarding what is and what is not acceptable speech.

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<sup>13</sup> *Handyside v. United Kingdom*, 24 Eur. Ct. H.R. (ser. A) at 23 (1976); accord *Dichand*, App. No. 29271/95 § 37; *Marônek*, 2001-III Eur. Ct. H.R. at 349; *Thoma*, 2001-III Eur. Ct. H.R. at 84; *Jerusalem v. Austria*, 2001-II Eur. Ct. H.R. 69, 81; *Arslan v. Turkey*, App. No. 23462/94 § 44(i) (Eur. Ct. H.R. July 8, 1999), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58271>; *De Haes v. Belgium*, 1997-I Eur. Ct. H.R. 198, 236; *Goodwin v. United Kingdom*, 1996-II Eur. Ct. H.R. 483, 500; *Jersild v. Denmark*, 298 Eur. Ct. H.R. (ser. A) at 23 (1994); *Thorgeir Thorgeirson v. Iceland*, 239 Eur. Ct. H.R. (ser. A) at 27 (1992); *Oberschlick v. Austria*, 204 Eur. Ct. H.R. (ser. A) at 25 (1991); *Lingens*, 103 Eur. Ct. H.R. at 26; *Sunday Times v. United Kingdom*, 30 Eur. Ct. H.R. (ser. A) at 40 (1979).

<sup>14</sup> *Şener*, App. No. 26680/95 § 39(i); accord *Thoma*, 2001-III Eur. Ct. H.R. at 84; *Observer & Guardian v. United Kingdom*, 216 Eur. Ct. H.R. (ser. A) at 30 (1991).

<sup>15</sup> Cf. Council of Eur., Rep. of the Comm. of Experts on Human Rights, Problems Arising from the Co-Existence of the United Nations Covenants on Human Rights and the European Convention on Human Rights, 45, H(70)7 (Aug. 1, 1970)(noting that restricting one’s freedom of thought or opinion is contrary to the quality of a democratic society).

<sup>16</sup> *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

<sup>17</sup> *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387–88 (1992).

<sup>18</sup> 533 U.S. 98, 112 (2001); see also *Orin v. Barclay*, 272 F.3d 1207, 1214–16 (9th Cir. 2001) (striking down a college policy that prohibited an abortion protestor from using religious terms in speech).

<sup>19</sup> *Norwood v. United Kingdom*, 2004-XI Eur. Ct. H.R. 343, 347–50 (decision) (holding the case inadmissible because the applicant’s actions constituted a violation of the Convention that bars protection of those same actions).

<sup>20</sup> *Vejdeland v. Sweden*, App. No. 1813/07 §§ 8–9, 59–60 (Eur. Ct. H.R. Feb. 9, 2012), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109046>.

17. Protection for freedom of expression pertains to all views and opinions and to all forms of media or publication.<sup>21</sup> The protections afforded to freedom of expression in Europe have generally been interpreted very liberally in a number of cases.<sup>22</sup> One example is *Arslan v. Turkey*, in which the ECHR extended Article 10 protection to a book recounting the history of the Kurdish people in Turkey from an admittedly biased perspective and encouraging people to oppose the Turkish government.<sup>23</sup> The same Court found a violation of Article 10 in *Sunday Times v. United Kingdom*, when the British government imposed an injunction restraining a newspaper from publishing damaging information about the British government.<sup>24</sup>
18. Ideas and opinions have also generally enjoyed strong protection. The ECHR has held that the dissemination of ideas, even those strongly suspected of being false, enjoy the protections of Article 10.<sup>25</sup> The responsibility of discerning truth from falsehood has in this sense been placed on the proper figure, the listener. Overall, the ECHR has thus recognised that the cure to bad speech is more speech and intelligent dialogue.

### *Over-Regulation of Speech*

19. The result of ‘hate’ speech provisions is a reduction in the fundamental right to freedom of speech and freedom of expression. Instead of being free to disagree with one another, have robust debate, and freely exchange ideas, ‘hate’ speech laws have shut down debate and created a heckler’s veto. In the end, a chilling effect is created that leads to self-censorship and an overly sensitive society.
20. This reality is working itself out on University campuses across the United Kingdom and is particularly acute in Scotland. An alarming trend of limiting freedom of expression on university campuses has become more and more aggressive in recent years. As *Spiked Online* has reported, 43 % of British Universities have implemented speech codes and policies which limit religious expression.<sup>26</sup> Evidence also shows that no less than 108 universities in the United Kingdom have actively censored free speech or have done so through over-regulation.<sup>27</sup>
21. By way of example, it would seem, cultural forces are aggressively trying to wipe out any dissenting views about abortion. On University Campuses across the country, students’ unions are adopting totalitarian pro-abortion policies which seek to prohibit the affiliation of pro-life student groups and no platform any pro-life activities. Such policies are not only woefully anti-democratic, they are often unlawful. In the last year, legal challenges were successfully brought against the Students’ Unions at Glasgow University, the University of Strathclyde and Aberdeen University. Cardiff University’s pro-choice policy was also amended following a challenge, to remove any semblance of direct discrimination or

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<sup>21</sup> *Goodwin*, 1996-II Eur. Ct. H.R. at 500 (discussing the “[p]rotection of journalistic sources” as a part of freedom of expression).

<sup>22</sup> *See, e.g., Lingens*, 103 Eur. Ct. H.R. at 26; *Sunday Times*, 30 Eur. Ct. H.R. (ser. A) at 40.

<sup>23</sup> App. No. 23462/94 §§ 45, 50.

<sup>24</sup> 30 Eur. Ct. H.R. (ser. A) at 41–42.

<sup>25</sup> *Salov v. Ukraine*, 2005-VIII Eur. Ct. H.R. 143, 180.

<sup>26</sup> *See*: <http://www.spiked-online.com/free-speech-university-rankings/>.

<sup>27</sup> *Id.*

restrictions on freedom of association. The Christian Legal Centre played significant roles in challenging the pro-abortion policies at both Aberdeen University<sup>28</sup> and Cardiff University.

22. These issues have extended into the realm of employment as well. Last year, the Christian Legal Centre received 895 enquiries from Christians who felt that they had suffered some form of detriment because of their Christian faith. A significant number of those enquiries came from people who were facing, or had faced, disciplinary action because of comments they had made in relation to sexual orientation in the context of their Christian beliefs. In fact, in the experience of the Christian Legal Centre, the number of these cases has grown exponentially in recent years. In one notable case, a student was removed from his university course for Facebook comments about homosexual behaviour being a sin.<sup>29</sup> In another, an actress was sacked and blackballed for posting her Christian beliefs about homosexual behaviour.<sup>30</sup> These cases also extend to schools. In Fairford, a pastoral assistant was dismissed from her job at a local Academy for posting her concerns about LGBT education and the new RSE regulations on her private Facebook page.<sup>31</sup> A pastor in a small free church in Ely, Cambridgeshire who also worked as a caretaker of a school, was disciplined for posting a message about gay Pride events and Christianity in his capacity as a pastor.<sup>32</sup> A Christian magistrate was also removed from his position for suggesting that children do better when raised by a mother and father in a low conflict marital relationship.<sup>33</sup> A former criminal who had a powerful conversion to Christianity which changed the trajectory of his life forever had his license to trade at the Chichester Market summarily revoked, after 15 years of running a stall in the market, because a customer was offended by a Christian tract he received from him about sexual immorality.<sup>34</sup> A physician was dismissed from his position at the Department for Work and Pensions because he refused to be compelled to use gender pronouns in a way that offended his Christian beliefs and conscience, even though he had never actually discriminated against a single service user.<sup>35</sup> Even an ordained Minister was forced out of his job in a prison for quoting the Bible about sexual immorality in a voluntary prison service to a group which included sexual offenders.<sup>36</sup>

### *Street Preachers*

23. As the tolerance agenda has evolved within the United Kingdom, there has grown with it a trend of intolerance and discrimination against Christians expression.<sup>37</sup> Arrests of street

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<sup>28</sup> <https://christianconcern.com/news/pro-life-group-win-affiliation-at-aberdeen-university/>.

<sup>29</sup> <https://www.theguardian.com/world/2019/jul/03/christian-wins-appeal-after-being-thrown-off-social-work-course>.

<sup>30</sup> <https://www.bbc.com/news/entertainment-arts-49881027>.

<sup>31</sup> See: <https://www.bbc.com/news/uk-england-gloucestershire-47946755>.

<sup>32</sup> <https://christianconcern.com/cccases/keith-waters/>.

<sup>33</sup> <http://www.christianconcern.com/cases/richard-page>.

<sup>34</sup> <https://archive.christianconcern.com/our-issues/employment/market-trader-wins-case-after-licence-revoked-for-giving-tract>.

<sup>35</sup> See e.g.: <https://www.foxnews.com/faith-values/christian-doctor-fired-gender-pronoun>.

<sup>36</sup> <https://christianconcern.com/cccases/barry-trayhorn/>.

<sup>37</sup> Ambassador Janez Lenarcic, at the time acting Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), acknowledged the need for action to stem the tide of censorship of Christian speech, stating, “*What came out clearly from this meeting is that intolerance and discrimination against Christians is manifested in various forms across the OSCE area (...) While denial of rights may be an important issue where Christians form a minority, exclusion and marginalization may also be experienced by Christians where they comprise a majority in society.*” Cf. Press Release, “*Intolerance and Discrimination Against Christians Needs to be Addressed, Concludes OCSE Meeting*”, issued by Org. for Sec. & Co-operation Eur., 4 March 2009, (summarizing the issues raised at an OSCE meeting concerning escalating discrimination against Christians in Europe).

preachers in Great Britain, for example, have increased at an disquieting rate.<sup>38</sup> The Christian Legal Centre has witnessed first-hand how incitement laws are being abused, or at the very least misinterpreted, in relation to Christian street preachers.

24. Despite the exemptions written into the Public Order Act 1986, specifically Sections 29J and 29JA, which are similar to those proposed in the instant legalisation, street preachers have consistently been arrested for preaching on the issue of homosexual behaviour. Michael Jones<sup>39</sup>, Andrew Geuter<sup>40</sup>, Rob Hughes<sup>41</sup>, and Tony Miano<sup>42</sup> are all examples of Christian Legal Centre cases which involved Christians being arrested for so-called homophobic remarks. While the Christian Legal Centre has a 100% success rate in street preacher cases, it cannot be denied that such arrests have a strong chilling effect on freedom of Christian expression. Similarly, Mike Overd<sup>43</sup> has been arrested seven times in recent years for publicly preaching on issues related to Islam and sexual purity. In his one conviction (before being over-turned on appeal), the prosecutor in the Bristol magistrate's court suggested that preaching certain verses from the Bible in today's England can amount to a Public Order offence.
25. Ian Sleeper was arrested for preaching a message of love for Muslims, but criticising Islam as a religion.<sup>44</sup> He was arrested in Southwark Borough, detained for 13 hours and had strict bail conditions imposed on him from entering the Borough. The Crown Prosecution Service eventually dropped the charges. Nonetheless, the chilling effect of such arrests undoubtedly has serious repercussions for freedom of Christian expression.
26. In 2019, footage of the arrest of Pastor Oluwole Ilesanmi outside Southgate Tube Station went viral.<sup>45</sup> Pastor Oluwole was arrested for allegedly breaching the peace, although mobile phone video footage clearly evidenced that no such breach of the peace occurred. Prior to the arrest, the street preacher had been engaging a Muslim man who appeared ready to physically confront Pastor Oluwole. When police arrived, the Muslim man left the scene without being confronted by police and Pastor Oluwole was arrested.
27. Records show that police then drove him more than 5 miles away to a remote area and de-arrested him, leaving him without any means of getting back to his place of residence.

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<sup>38</sup> See e.g.: e.g., H. Blake, "Christian Preacher Arrested for Saying Homosexuality Is a Sin", Telegraph, 2 May 2010, <http://www.telegraph.co.uk/news/religion/7668448/Christian-preacher-arrested-for-saying-homosexuality-is-a-sin.html> (reporting on the arrest of street preacher Dale McAlpine); "Birmingham Street Preacher Wins Wrongful Arrest Case", Christian Institute, 10 December 2010, <http://www.christian.org.uk/news/birmingham-street-preacher-wins-wrongful-arrest-case/> (reporting on the arrest and subsequent trial of street preacher Anthony Rollins); H. White, "Another UK Street Preacher Arrested, Charged, for Views on Homosexuality", Lifesitenews.com, 3 May 2010, [http://www.lifesitenews.com/home/print\\_article/news/1756/](http://www.lifesitenews.com/home/print_article/news/1756/) (reporting that McAlpine's arrest was the second arrest of that kind made in just over a month); cf. also: Bureau of Democracy, Human Rights, & Labor, *International Religious Freedom Report 2010*, U.S. Dep't of State, 17 November 2010, <http://www.state.gov/j/drl/rls/irf/2010/index.htm> (detailing the status of religious freedom in the United Kingdom); Video: "US Govt Notes UK Christians Get Rough Ride", Christian Institute, 18 November 2010, <http://www.christian.org.uk/news/video-us-govt-notes-uk-christians-get-rough-ride/> (reporting on U.S. Secretary of State Hilary Clinton's address concerning the Department of State's annual report on religious freedom in the United Kingdom).

<sup>39</sup> <http://www.christianconcern.com/cases/michael-jones>.

<sup>40</sup> <http://www.christianconcern.com/cases/andrew-geuter>.

<sup>41</sup> <http://www.christianconcern.com/cases/rob-hughes>.

<sup>42</sup> <http://www.christianconcern.com/cases/tony-miano>.

<sup>43</sup> <http://www.christianconcern.com/cases/mike-overd>.

<sup>44</sup> <https://archive.christianconcern.com/cases/ian-sleeper>.

<sup>45</sup> <https://christianconcern.com/news/police-caught-out-by-street-preacher-evidence/>.



Police then denied that the event happened until evidence was produced to substantiate it. The end result was that Pastor Oluwole was awarded a damages settlement for the misconduct he suffered.

28. In another case which will remain anonymised for the purposes of this submission, one street preacher, who is a member of the aviation industry, was even visited by counter-terrorism police and his flight security pass confiscated for allegedly making offensive comments about Islam. The Crown Prosecution Service, even before that point, had dropped the charges against the man because they were based on the hearsay testimony of a single Muslim shop worker who never actually identified him as the person who made the comments.

### *Conclusion*

29. The reality is that in Scotland, there is currently no issue with 'hate' speech. Speech is sufficiently regulated by public opinion. If someone makes a statement which evidences prejudice of almost any kind, the result for the individual will almost always be loss of reputation, public shaming, and even loss of business income or employment. The government puts forth no compelling evidence to suggest these new measures are needed or more importantly, that they are warranted. At its heart, this bill poses an existential threat to freedom of expression. As this submission has demonstrated, the fallacious premise that underpins 'hate' speech laws has also eroded free speech in any number of other areas within the public square and has had a particularly deleterious effect on Christian speech. What is equally evident is that no matter what exemptions are put in the bill to protect religious speech, overly sensitive local authorities and law enforcement will nonetheless continue to arrest otherwise innocent civilians for exercising their lawful right to speech. The cost of this bill to our democracy is far too high a toll to pay. For the sake of our fundamental freedoms, Scotland deserves better.