

May 2009

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| <p>TO: Interested Parties</p> <p>FROM: Rachel Laser, Director of the Culture Program and Lanae Erickson, Policy Counsel</p> <p>RE: Questions and Answers about the Hate Crimes Bill for People of Faith</p> |
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Historically, there has not been a great deal of trust and communication between the gay rights community and many in the religious community. With hate crimes legislation coming up, there are some in the faith community who are concerned that the bill will impede religious freedom or punish religious objections to homosexuality. This memorandum seeks to answer these questions from the perspective of an organization that cares deeply about gay rights and also religious freedom, and sees people from both communities as people of good will. Below, please find a series of questions often asked by the faith community about the hate crimes bill and answers to them.

Could I be prosecuted for thinking or saying that homosexuals should go to hell—or worse?

No. The bill does not punish thoughts, words, or beliefs.¹ In order to be prosecuted for a hate crime, a person must cause “bodily injury” or death, or attempt to cause bodily injury by using a gun, bomb, or dangerous weapon. And the language of the bill specifically says that bodily injury “does not include solely emotional or psychological harm to the victim.” The hate crimes bill is about violent people who physically attack others because of who they are—not people who disapprove of, dislike, or speak out against homosexuality.

Could a pastor be prosecuted for preaching that homosexuality is an abomination, or saying that gay people will go to hell?

No. Unless a person actually causes “bodily injury,” or attempts to cause bodily injury by using a gun, bomb, or dangerous weapon, they cannot be prosecuted under the proposed hate crimes bill. This bill is not about thinking or believing, but doing and harming. In fact, since 1968 when a parallel federal hate crimes bill was passed, there has not been a single successful prosecution based on speech. There have also been none in the 45 states that have hate crimes laws.

But what if someone heard a sermon declaring that homosexuality is a sin and then went out and committed a crime against a gay or lesbian person—could their pastor be prosecuted?

¹ The *Matthew Shepard Hate Crimes Prevention Act*, S.909 in the 111th Congress.

No. The First Amendment protects the right of a pastor to preach against homosexuality, and the text of the bill explicitly incorporates those protections. Specifically, the bill says: “Nothing in this Act shall be construed to prohibit any constitutionally protected speech, expressive conduct or activities (regardless of whether compelled by, or central to, a system of religious belief), including the exercise of religion protected by the First Amendment and peaceful picketing or demonstration.” The bill also provides that “Nothing in this Act shall be construed to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs.”

Can a person’s religious views or the views of their pastor be used as evidence to prosecute that person for a hate crime?

Not in the typical case. Under the Federal Rules of Evidence, a judge must first determine whether the evidence is relevant to the crime that occurred. If it is not relevant, it is not admissible. If relevant, the trial judge must then determine whether any prejudice to the defendant—including the risk that a defendant might be convicted only for holding particular beliefs—is outweighed by the probative value of the evidence. In ruling upon the admission of evidence in cases involving existing federal hate crime statutes, courts have been very careful in admitting such evidence and have been willing to limit its use where appropriate.

Does the hate crimes bill provide any protections for religious liberty?

Yes. The legislation under consideration by Congress has explicit provisions to protect religious liberty. The text of the legislation states that it does not “prohibit any constitutionally protected speech, expressive conduct or activities...including the exercise of religion protected by the First Amendment and peaceful picketing or demonstration.” This ensures that no pastor, Sunday school teacher, or religious leader can be prosecuted for expressing their best understanding of what their religious tradition teaches about homosexuality. The text also provides a guarantee that “Nothing in this Act shall be construed to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs.”

But if hate crimes laws have been used to prosecute religious people in other countries, doesn’t that mean it could happen here?

No. Our country’s First Amendment is unique, and we pride ourselves on protecting freedom of speech and religion more fervently and comprehensively than any other nation in the world. In America, we protect expression that other countries punish as “hate speech,”² because we place an extremely high value on freedom of speech and the right to dissent. The current parallel federal hate crimes law has been on the

² For example, Canada’s hate crimes law applies to “Everyone who, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group,” which has led to prosecutions of speech that America’s First Amendment would never allow.

books for over forty years, and all but five states have some kind of hate crimes law. Because of the strength of the First Amendment, however, in four decades since the first federal hate crimes laws were enacted, the federal government has not prosecuted anyone based on speech alone.

Why should religious leaders and Americans support an extension of hate crimes laws?

It is a fundamental religious value to honor and respect the innate human dignity of all people. It is also a fundamental American value that no person should live in fear of violence because of who they are. Passage of the hate crimes bill would further those values by protecting all people, including gay and lesbian Americans, from bodily harm based on who they are. Although the legislation has been framed by some opponents as hostile to religion, its language actually broadens protections for religious liberty. Current federal law only protects against hate crimes based on religion if the person was targeted *because they were engaged in a federally protected activity* like voting or going to school. The legislation under consideration by Congress would remove that limitation.

Are there any religious groups who support the hate crimes bill?

Yes. Many religious groups have expressed support for the bill, including but not limited to the Episcopal Church, the Evangelical Lutheran Church of America, the Interfaith Alliance, the Presbyterian Church, the United Synagogue of Conservative Judaism, the United Methodist Church, and the Congress of National Black Churches.

Is the bill solving a real problem? Are gay and lesbian Americans really being targeted for attack?

Yes. FBI data show 1,265 reported hate crime incidents directed at gay and lesbian people in the year 2007 alone—the third most frequent victims and over 16% of all hate crimes reported that year.³ But, for the purposes of this legislation, the most important point is that every act of violence committed against an individual based on hatred for gay and lesbian people is meant to send shockwaves of fear and intimidation throughout the entire gay community. Law enforcement groups, who only endorse legislation they consider to be in the best interest of public safety, also agree there is a problem that merits the passage of an expanded hate crimes law.⁴

Aren't these crimes already being prosecuted by the states?

In many cases, yes. But federal hate crimes laws do not disregard state laws—they complement and enhance them by providing a backstop to state and local law enforcement. They provide state and local authorities with financial assistance if they

³ Federal Bureau of Investigation, "Hate Crimes Statistics: 2007." Available at: <http://www.fbi.gov/ucr/hc2007/incidents.htm>.

⁴ The International Association of Chiefs of Police, the Police Foundation, and the National District Attorneys Association are among the law enforcement groups that support this legislation.

are struggling with the cost of investigating or prosecuting hate crimes. For example, in Laramie, Wyoming, they had to furlough five sheriff deputies in order to cover the cost of investigating and prosecuting Matthew Shepard's murder. The hate crimes bill also allows federal prosecutors to step in and pursue cases if state or local authorities cannot or will not prosecute a hate crime.

Other Resources

FBI Hate Crimes Statistics:

<http://www.fbi.gov/ucr/hc2007/victims.htm>

Bill Text:

<http://www.opencongress.org/bill/111-s909/text>

Leadership Conference on Civil Rights:

<http://www.civilrights.org/hatecrimes/>

This Document Online:

<http://www.thirdway.org/products/203>