

April 12, 2007

TO: Interested Parties

**FROM: Joe Solmonese, President
The Human Rights Campaign**

**SUBJECT: Majority of Americans Strongly Support the Local Law Enforcement
Hate Crimes Prevention Act (Hate Crimes Legislation)**

The Local Law Enforcement Hate Crimes Prevention Act —“Hate Crimes Legislation”

As Americans, we must take a strong stand against violence committed against our neighbors for simply being themselves. The purpose of our government, first and foremost, is to protect all of our citizens — whether they are black, disabled, Christian or gay. While a random act of violence against any individual is always a tragic event, violent crimes based on prejudice have a much stronger impact because the motive behind the crime is to terrorize an entire community. These hate crimes chip away at the very foundations of our democracy – that all citizens are created equal and are afforded the same freedoms and protections.

This year represents the best opportunity we’ve ever had to finally protect all Americans from hate crimes – including crimes based on sexual orientation, gender, gender identity or disability – by passing the long overdue Local Law Enforcement Hate Crimes Prevention Act. Earlier versions of this bill have already passed in both the Republican-led House (2005) and Senate (2004) in recent years only to be derailed by partisan politics. Last November, the American people rejected divisive partisanship and won’t stand for our leaders putting their own electoral prospects ahead of progress and protections for all our citizens.

Why the Law Is Needed:

There’s a reason why the bill has been supported by 31 state Attorneys General and the leading law enforcement organizations – because, despite progress toward equality in almost all segments of our society – hate crimes continue to spread fear and violence among entire communities of Americans and law enforcement lack the tools and resources to prevent and prosecute them. In 2003, the FBI announced that there were more than 9,000 reported hate violence victims in the United States — almost 25 victims a day, or approximately one hate crime every hour. One in six hate crimes are motivated by the victim’s sexual orientation.

The Act also receives strong support by the majority of Americans. According to a new poll conducted by Peter Hart Research Associates, three in four (or 73 percent) of voters favor strengthening hate crimes laws to include sexual orientation and gender identity and to give local law enforcement the tools they need to prevent and prosecute these violent acts based on bigotry.

What the Law Would Do:

The Local Law Enforcement Hate Crimes Prevention Act would strengthen the ability of law enforcement officials to investigate and prosecute hate crimes by:

- **Protecting all Americans.** Under the current federal law, enacted nearly 40 years ago, the government has the authority to help investigate and prosecute bias motivated attacks based on race, color, national origin and religion and because the victim was attempting to exercise a federally protected right. For example, authorities became involved in a Salt Lake City case where James Herrick set fire to a Pakistani restaurant on September 13, 2001. Herrick was sentenced to 51 months incarceration on January 7, 2002, after pleading guilty to violating 18 U.S.C. § 245.

However, under current law, the federal government is NOT able to help in cases where women, gay, transgender or disabled Americans are victims of bias-motivated crimes for who they are. For example, in Texas, in July of 2005, four men brutally assaulted a gay man. While punching and kicking him, whipping him with a vacuum chord and assaulting him with daggers, the offenders told the victim that they attacked him because he was gay. Two of the men were sentenced to six years in prison under a plea bargain that dropped the charges that could have sent them to prison for life. Under this bill, federal authorities would have had the jurisdiction to prosecute the crime or could have provided local authorities resources that might have assisted them in pursuing a longer sentence.

- **Equipping Local Law Enforcement.** The Act would provide crucial federal resources to state and local agencies and equip local law enforcement officers with the tools they need to investigate and prosecute crimes. While most states recognize the problem of hate violence, and many have enacted laws to help combat this serious issue, federal government recognition of the problem is crucial to its solution. Too many local jurisdictions lack the full resources necessary to prosecute hate crimes. For example, when Matthew Shepard was murdered in Laramie, WY, in 1998, the investigation and prosecution of the case cost the community of 28,000 residents about \$150,000, forcing the sheriff's department to layoff five deputies in order to save money.
- **Ensuring Equal Application of the Law.** The Act would allow federal authorities to become involved if local authorities are unwilling or unable to act. In the hate crime on which the film "Boys Don't Cry" was based, 21 year-old Brandon Teena was raped and later killed by two friends after they discovered he was biologically female. After the rape and assault, Teena reported the crime to the police, but Richardson County Sheriff, Richard Laux, who referred to Teena as "it," did not allow his deputies to arrest the two men responsible. Five days later, those two men shot and stabbed Teena to death in front of two witnesses, Lisa Lambert and Philip DeVine, who were then also murdered. JoAnn Brandon, Teena's mother, filed a civil suit against Sheriff Laux, claiming that he was negligent in failing to arrest the men immediately after the rape. The court found that the county was at least partially responsible for Teena's death and characterized Sheriff Laux's behavior as "extreme and outrageous." Had this federal hate crime law been in effect, federal authorities could have investigated and prosecuted the offenders when the local authorities refused to do so.

How the Supreme Court views laws addressing bias motivated crime:

Opponents of the bill state that this law would "punish thoughts." Those claims are not only unfounded, but fly in the face of our experience with hate crimes laws. The Supreme Court has clearly ruled that considering bias as a motivation for the crime does not run afoul of the First Amendment. Two Supreme Court cases from the early 1990's, *R.A.V. v. City of St. Paul* and *Wisconsin v. Mitchell*, clearly demonstrate that a criminal statute may consider bias motivation when that motivation is directly connected to a defendant's criminal *conduct*. By requiring this connection to criminal activity, the Court has drawn a sharp distinction between punishing thought and punishing bias motivated violence. In *Wisconsin v. Mitchell*, the Supreme Court made clear that "the First Amendment . . . does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent."

Who Supports Strengthening the Federal Hate Crimes Law:

The Local Law Enforcement Hate Crimes Prevention Act has broad public and bipartisan support. The Act was introduced on March 20, 2007, by Representatives John Conyers, Jr. (D-MI), Mark Steven Kirk (R-IL), Barney Frank (D-MA), Christopher Shays (R-CN), Tammy Baldwin (D-WI), Ileana Ros-Lehtinen (R-FL), Jerrold Nadler (D-NY), and Mary Bono (R-CA), with 137 cosponsors. Earlier versions of the bill have passed both houses of Congress in recent years, only to fall victim to partisan politics.

According to Hart Research, large majorities of every major subgroup of the electorate — including such traditionally conservative groups as Republican men (56 percent) and evangelical Christians (63 percent) — express support for strengthening hate crimes laws to include sexual orientation and gender identity. Support also crosses racial lines — with three in four whites (74 percent), African-Americans (74 percent) and Latino/as (72 percent) supporting the Act.

More than 210 law enforcement, civil rights, civic and religious organizations support the passage of this crucial piece of legislation, including:

- President George H.W. Bush's attorney general, Dick Thornburgh
- National Sheriffs' Association
- International Association of Chiefs of Police
- 31 state attorneys general
- National District Attorneys Association
- Presbyterian Church
- Episcopal Church
- Leadership Conference on Civil Rights
- National Association for the Advancement of Colored People
- National Council of La Raza
- Parents Network on Disabilities
- Human Rights Campaign

In mid-April, hundreds of religious leaders from all faiths and all 50 states will be converging on Capitol Hill to fight for the passage of this bill. The Clergy Call for Justice and Equality will

consist of religious and faith leaders meeting with federal legislators to express their support of the bill and the need to pass the Act.

Right Wing Attacks

The right wing attack machine is once again geared up to derail the Local Law Enforcement Hate Crimes Prevention Act. Last week, the Family Research Council wrongly accused House and Senate supporters of the Act of eroding religious liberty by “punishing thought and religious belief.” The Act doesn’t infringe upon religious leaders’ right to preach their beliefs, because the Act does not punish speech. The Act punishes only violent **actions** – not thoughts or beliefs -- based on prejudice. In fact, the Act actually protects religious liberty by addressing violence against individuals based on their religion. Such attacks are among the most prevalent hate crimes, and many religious groups support this hate crime legislation precisely *because* it could stem violent acts motivated by religious bigotry.

America Moves Toward GLBT Equality:

While there is much left to do to achieve real equality for gay, lesbian, bisexual and transgender Americans, it is undisputable that throughout the last decade we’ve made significant progress:

Fortune 500 Companies: For the first time ever, a majority of the most successful companies in the country offer domestic partner benefits to the same-sex partners of their employees. These 264 Fortune 500 companies collectively employ more than 20 million people.

Equality in States: In the last several years, many states have marched toward equality while the nation’s capitol remained mired in partisan politics. Seventeen states and the District of Columbia now have laws that prohibit employment discrimination based on sexual orientation. Seven states and the District of Columbia have laws that grant varying degrees of rights and responsibilities to same sex couples, and eleven states are considering bills this year. Just last week, on April 4, 2007, the New Hampshire House passed a civil unions bill while earlier this spring, Indiana and Maryland defeated a ban on marriage for same sex couples.

“Don’t Ask, Don’t Tell”: According to a recent Harris poll, 55 percent of Americans now support repealing the military’s “Don’t Ask, Don’t Tell” policy. A December 2006 Zogby poll of soldiers returning from Iraq and Afghanistan found that 73 percent of soldiers reported being “comfortable ... in the presence of gays,” and only 37 percent oppose repealing the policy. Many military officials, including Gen. John Shalikashvili, chairman of the Joint Chiefs of Staff under President Clinton, now believe that gays should be allowed to serve openly. Congress recently introduced a bill to repeal this discriminatory policy with 100 original co-sponsors.

Pension Protection Act: Last year’s Pension Protection Act included the first-ever federal protections for GLBT families, including a provision that alleviated excessive tax penalties on surviving partners who inherit 401(k) proceeds—penalties that married couples do not pay. In addition, the Act permits withdrawal of 401(k) funds for a

qualified emergency of a domestic partner, a protection formerly unavailable to same-sex couples.

Wedge Politics Losing Steam: Using wedge politics is becoming less and less effective in the legislative arena, as well as the court of public opinion. In 2006, legislative attempts to restrict adoption by GLBT individuals or same-sex couples failed in five states. Proposed constitutional amendments to ban marriage rights for same-sex couples failed in 11 states, including Arizona, which became the first state to defeat a proposed constitutional ban on same-sex marriage by popular vote. As in 2004, the Federal Marriage Amendment failed to pass Congress in 2006 — this time with two additional Republican senators voting against it. Members of Congress were on the same page as their constituents: a Peter D. Hart Research Associates opinion poll last year found that voters ranked efforts to pass an amendment banning marriage for same-sex couples dead last on a list of priorities. Even the constitutional flag-burning amendment — another divisive issue — ranked higher than marriage.