

April 2009

TO: Interested Parties
FROM: Rachel Laser, Director of the Culture Program and Lanae Erickson, Policy Counsel
RE: Answering Religious Concerns about the Hate Crimes Bill

Congress will soon consider legislation¹ to expand the federal hate crimes law to include protections for crimes directed at individuals because of their gender, gender identity, sexual orientation, or disability. A supermajority of Americans (68% in a 2007 Gallup Poll) express support for expanded hate crimes protections, and that support holds even across traditionally conservative demographic groups (56% among Republican men and 63% among Evangelical Christians, according to a 2007 poll by Hart Research).

Despite relatively positive numbers among religious voters, we suspect that support is not secure and that opposition by some in the faith community remains the most significant hurdle to passing the hate crimes bill. Certain opponents of the legislation—often opinion leaders in observant communities—will make the case that the hate crimes bill would impede religious freedom or punish religious objections to homosexuality. They will seek to frame this as a debate between Jesus and gay rights advocates.

Clearly, proponents of the bill should continue to tell the story about the severity and frequency of hate crimes,² but this argument will not surmount the religion obstacle. In addition, the historic distrust between gay equality advocates and many religious leaders compounds the problem.

To bridge this divide, advocates and policymakers must make two crucial points:

- Demonstrate that the concerns of religious leaders have been heard and addressed; and
- Establish that this legislation is based on fundamental American and religious values.

Utilizing these two strategies will not eliminate all religious objections to the bill, but it will help assuage the fears of persuadable people of faith and ensure that the debate does not devolve into a fight between the religious community and gay and lesbian Americans.

Part I: Demonstrate that the Concerns of Religious Leaders have been Heard and Addressed

Some opponents have raised the fear that the hate crimes bill will punish thought and religious beliefs, or that the bill will prevent clergy in churches, synagogues, mosques

and other theological institutions from freely expressing their best understanding of what their religious tradition teaches about homosexuality. Rather than ignoring religious concerns, proponents must address them directly in the following two ways:

- Make clear that this bill is not about thinking or believing, but doing and harming. Different religions preach different lessons about sexual orientation. But no religion counsels its congregants to commit violence against gay and lesbian people. Unless a person actually commits “bodily injury,” or attempts to commit bodily injury by using a gun or explosive device, they cannot be prosecuted under the hate crimes bill. In addition, the U.S. Supreme Court has ruled that bias can only be considered when that motivation is directly connected to the perpetrator’s criminal conduct.³ 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.
- Show that proponents have listened to religious leaders—which is exactly why the bill has not just one but two provisions to protect religious liberty. The text of the legislation explicitly states that it does not prohibit “any expressive conduct . . . , or any activities protected by the free speech or free exercise clauses of, the First Amendment to the Constitution.” It is also important to note that our country’s First Amendment is unique and expansive in its protection of free speech. In America, we even protect expression that some countries punish as “hate speech,”⁴ because we place an extremely high value on freedom of speech and the right to dissent.

The legislation also states that if a person is being prosecuted for a violent criminal act like assault or murder, their “expression or associations” cannot be introduced as evidence “unless the evidence specifically relates to that offense.”

These robust protections show that proponents of the hate crimes legislation have taken into account the concerns of the religious community. In response, many religious groups have expressed support for the bill, including 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.

Part II: Establish that this Legislation is Based on Fundamental American and Religious Values

Advocates must situate the hate crimes bill within America’s 230 year tradition of protecting and expanding liberty, freedom and acceptance. They must show that the legislation furthers the core American and religious values of:

- Recognizing and protecting the human dignity of every person. It is a fundamental American value that no person should live in fear of violence because of who they are. It is also a core religious value that all people are created equally in the image of God. Advocates must explain how the hate crimes bill is a logical extension of these values because it protects all people,

including gay and lesbian Americans, from being intentionally targeted for bodily harm based on who they are.

- Safeguarding religious liberty and freedom of speech. As Americans, we pride ourselves on our First Amendment. Proponents of the hate crimes bill should underscore the bill's robust First Amendment protections, as discussed in Part I of this memo. Advocates can also note that the bill's language actually broadens protections against violence motivated by religious discrimination because it eliminates the limitation that the victim of a hate crime must be targeted because they are participating in a federally protected activity (like voting or going to school).⁵

Advocates of the hate crimes bill must reference the fact that every stage of America's journey has involved controversy and raised fears about leaving behind core American traditions, but that, in the end, America has grown to be a stronger and better country every time it has extended protections to its people.

Overall Message

"I support expanding the hate crimes law because it is based on two fundamental American values: recognizing the dignity of every person and protecting religious freedom and freedom of speech. This legislation protects people from violence based on who they are and has explicit protections, resulting from conversations with religious leaders, to ensure that the law does not punish what people think, feel, or believe, but rather what they do physically to harm others. And it reaffirms America's promise made over 230 years ago to life, liberty, the pursuit of happiness, and justice for all."

¹ The *Local Law Enforcement Hate Crimes Prevention Act*, H.R. 1913 in the 111th Congress.

² 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. Federal Bureau of Investigation, "Hate Crimes Statistics: 2007." Available at: <http://www.fbi.gov/ucr/hc2007/incidents.htm>.

³ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

⁴ 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.

⁵ Current federal hate crimes law requires that a prosecutor prove two things: that the victim was targeted because of his or her race, color, religion, or national origin, and that the victim was chosen because he or she was participating in a federally protected activity. The *Local Law Enforcement Hate Crimes Prevention Act* would remove the "federally protected activity" requirement—thus broadening protections against hate crimes based on religion, as well as other protected classes.