



Q&A on “Hate Crimes” Legislation

May 2007

In light of Thursday’s House Floor consideration of H.R. 1592, the Local Law Enforcement Hate Crimes Prevention Act, it might be useful to review the arguments that pro-hate crimes forces will assert.

Isn’t it true that H.R. 1592 is merely an extension of state hate crime laws that are already on the books?

- No. Although 45 states and the District of Columbia have some form of hate crime laws, many of them are not as broad as this bill, and dozens of state laws do not include terms such as *sexual orientation, gender identity, and disability* (which are used, but not explicitly defined in H.R. 1592). Further, H.R. 1592 provides federal law enforcement assistance and federal grants to states and local law enforcement entities to further investigate and pursue *potential* hate crime violations *under state or federal law*.

Aren’t First Amendment free speech protections specifically safeguarded in this bill by the Davis amendment?

- No. The Davis amendment merely restates the First Amendment, thus giving the appearance of strengthening free speech while not substantively providing any additional protections. Since this amendment does not expressly state any specific actions that would be protected under the First Amendment (i.e. – publicly denouncing homosexual behavior as a sin or placing an advertisement that includes Biblical verses that condemn homosexual behavior on a public billboard), it has the net effect of paraphrasing the First Amendment and nothing more. As the Judiciary Committee Minority staff has noted, the Supreme Court has “already has decided that hate crimes laws are constitutional under the First Amendment, *and upheld the criminal conviction of a person* for “hate speech” when coupled with a violent act committed by other persons (*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)).” Thus, religious leaders promoting traditional morality could be made subject to compulsory legal processes (and hauled into court) simply because their religious teachings may have been misconstrued by a deranged murderer. (emphasis added)

Aren’t the charges that hate crime legislation will lead to infringing free speech and prosecution of “hate speech” far fetched and unfounded?

- No. In fact, there have been dozens of documented cases of individuals exercising their free speech rights that have been prosecuted under state hate crime laws, as prosecutors blur the

line between what constitutes a “hate crime” and what they *deem* hate speech. Consider the following four examples:

- In Philadelphia, 11 Christians were arrested and jailed overnight in 2004 for singing and preaching in a public park at a homosexual street festival. Five of them were charged with five felonies and three misdemeanors, totaling a possible 47 years in jail, based on Pennsylvania’s “hate crimes” law.
- In Canada, a newspaper publisher and a man who placed a newspaper ad faced jail and were fined \$4,500 each, for running an ad containing references to several Bible verses regarding homosexuality.
- A pastor in New York saw his billboard with a Bible verse on it taken down under pressure from city officials, who cited “hate crime” rhetoric. (*The New York Post*, March 12, 2000).
- The San Francisco Board of Supervisors officially approved a resolution urging local media to decline to run advertisements by pro-family groups that offered an alternative to the homosexual lifestyle.

Aren’t increased federal hate crime laws necessary to combat the significant rise of violent crimes motivated by hate?

- No. According to the FBI statistics, incidences of hate crimes have actually declined over the last ten years. Further, hate crimes represent the extreme minority of violent crimes committed in the U.S. For example, of the reported hate crimes in 2005, six were murders, three were rapes, and a majority of the crimes were characterized as “intimidations” as opposed to any involving bodily injury.

Won’t H.R. 1592 provide needed assistance to local law enforcement in prosecuting violent crimes in all 50 states?

- No. The underlying offense to all hate crimes are already fully and aggressively prosecuted in all 50 states. This bill would provide *additional* federal funds and resources only for *potential hate crimes*, and would increase penalties and fines for violent crimes that were motivated by the specific hate defined in this bill, but not for any other “random” violent crime. For example, a violent crime against an individual that is targeted because he is a transsexual or a necrophile (sexual arousal or activity with a corpse) will be investigated, prosecuted, and sentenced more harshly than an identical violent crime against a pregnant woman or a police officer.

Are federal hate crime laws constitutional?

- No. H.R. 1592 violates the Commerce Clause (Article I, Section 8, Clause 3), the First (free speech), Tenth (regarding federalism), Thirteenth (regarding slavery), Fourteenth (rights of former slaves), and Fifteenth Amendments (voting right protections for immutable characteristics). See Judiciary Committee talking points and Legislative Bulletin for further information.

RSC Staff Contact: Derek V. Baker, derek.baker@mail.house.gov, 202-226-8585