



April 22, 2009

Honorable John Conyers Jr.
House of Representatives
Judiciary Committee Chairman
2426 Rayburn HOB
Washington, DC 20515-2214

Honorable Lamar Smith
House of Representatives
Judiciary Committee Ranking Minority Member
2409 Rayburn HOB
Washington, DC 20515-4321

Re: H.R. 1913 - Local Law Enforcement Hate Crimes Prevention Act of 2009

Gentlemen:

The Alliance Defense Fund writes to express our opposition to H.R. 1913, the Local Law Enforcement Hate Crimes Prevention Act of 2009, and to urge the members of the Judiciary Committee to vote against this bill. By way of short introduction, the Alliance Defense Fund is a legal alliance dedicated to preserving constitutional liberties. Specifically, ADF is at the forefront of many ongoing battles where religious liberties intersect with the homosexual legal agenda. It is precisely this intersection that concerns us and motivates us to write in opposition to H.R. 1913.

The emotion of hate is an unfortunate reality of the human experience. But it is not a crime unless accompanied by a criminal action – and even then it is the *action* that is within the police power of the government, not the *emotion*. The reality is that “hate” crime laws are designed to punish people for what they think, feel, or believe. The crime itself that is committed is already punished under various federal and state criminal laws. The only thing added by H.R. 1913 is punishment for what a person thinks, feels, or believes. That intent is diametrically opposed to the U.S. Supreme Court’s statement in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943): “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” “Hate” crime laws are an effort to enforce the orthodoxy of political correctness.

We have defended against efforts recently to impose upon sincere people of faith a “political orthodoxy.” In one case, a small photography company in New Mexico was fined by that State’s human rights commission for refusing to photograph a civil union “commitment ceremony.”¹ The fine was imposed even though civil unions are not legal in New Mexico and photographing such a ceremony was in direct opposition to the photographer’s sincere religious beliefs.

Similarly, in New Jersey, the Ocean Grove Camp Meeting Association recently sued the New Jersey Division on Civil Rights for threatening to prosecute the Association. The Association’s “crime” was to abide by its religious beliefs not to allow civil union ceremonies to be conducted on its private property.²

These instances illustrate what is happening now to people of faith who choose to abide by their deeply held and sincere religious beliefs in the face of state mandates to compromise their faith. Expanding federal criminal law to protect “hate” crimes against actual or perceived “sexual orientation” or “gender identity” will have a similar impact on people of faith as these situations illustrated above. While we do not advocate crime and violence, the real issue behind the “hate” crimes law is its punishment of thought and belief and the imposition of a political orthodoxy on people of faith.

Passing H.R. 1913 will elevate “sexual orientation” and “gender identity” to a protected class under federal law. The legitimate concern that many have regarding the creation of a federal “hate” crime law is that it may ultimately be used to punish the public expression of religious beliefs. True, the current version makes only violent crimes against persons a federal offense. However, it incorporates the definition of “hate crime” from section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. § 994 Note). See H.R. 1913 section 3(2). That definition is not limited to crimes of violence. It states that a “‘hate crime’ means a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.” There is a legitimate concern that once Congress makes any “hate” crime a federal offense, the categories of crime will expand to include speech that causes someone to “feel” intimidated, just as they have in other places such as Australia, Canada, and Sweden.³

¹ See ADF to appeal N.M. commission’s ruling against Christian photographer, *available at* <http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4467>.

² See N.J. ministry sues to prevent state from forcing church to violate its religious beliefs, *available at* <http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4206>.

³ In Australia, two men were prosecuted for a “hate crime” because they held a seminar to educate Christians about Muslim beliefs. “Landmark Ruling Puts Freedom of Speech in Focus,” Christianity Today, December 1, 2004 (see www.ctlibrary.com/ct/2004/decemberweb-only/12-20-33.0.html). In Canada, multiple persons have been convicted under a law criminalizing as “hate propaganda” any speech that is critical of homosexual behavior. However, extreme hostility toward religious objections to homosexual behavior are permissible. See Kevin Bourassa and Joe Varnell, “Purging Toxic Religion in Canada: Gay Marriage Exposes Faith-Based Bigotry,” January 18, 2005 (see <http://www.samesexmarriage.ca/equality/toxic180105.htm>). And in Sweden a pastor was convicted by a trial court and sentenced to jail time for a hate crime after preaching a sermon in which he spoke of the obligation of Christians

And, evidence of expressions or associations of the defendant can be used at trial. While the bill, as drafted prohibits use of expressions or associations as *substantive* evidence, it does not preclude evidence of speech and association as “other bad acts” evidence under the Federal Rules of Evidence. Other bad acts under Federal Rule of Evidence 404(b) may not be admitted as “substantive” evidence, but may be admitted to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident” In addition, prosecutors are given great leeway in the scope of impeachment of a defendant on cross-examination. *See Doyle v. Ohio*, 426 U.S. 610, 617 n.7 (1976). Therefore, it is likely that a great deal of evidence of a defendant’s statements, associations, and support of organizations could be presented to a jury in connection with a prosecution under the proposed federal hate crime statute. This is a legitimate concern for churches and organizations that hold a sincere (peaceful) religious belief against homosexual behavior.

Disturbingly, H.R. 1913 prohibits “hate” crimes against even “*perceived* sexual orientation” or “gender identity.” This provision would allow for evidence of a defendant’s *perception* (i.e. what the defendant believed or thought) in a criminal prosecution. This is again an instance where belief or thought becomes an element of the prosecution under a “hate” crimes law.

Of course, under current First Amendment jurisprudence, persons prosecuted for committing hate crimes because of innocuous statements or politically incorrect public statements of religious beliefs have a free-speech defense. But that does not prevent the arrest and prosecution of the persons. In October of 2005 a group of Christians tried to protest at an “Outfest” on public streets in Philadelphia. Despite being harassed and intimidated by “Outfest” participants, the protestors were arrested and charged under Pennsylvania’s “hate” crime laws with “ethnic intimidation,” “riot,” and “conspiracy.” Although the charges were ultimately dismissed (with Alliance Defense Fund assistance), they nevertheless had to go through the ordeal of arrest and prosecution. Simply being required to undergo a criminal defense in such circumstances can lead to a chill and censorship of legitimate free speech and free exercise of religion activities.

In short, hate crimes laws have been used in foreign countries to prosecute and silence people of faith genuinely and peacefully opposed to homosexual behavior. Similar laws in this country that elevate “sexual orientation” and/or “gender identity” to a protected status are being used to silence and punish those who oppose homosexual behavior on legitimate moral and religious grounds. The passage of H.R. 1913 will contribute to and exacerbate this environment and will lead to censorship and fear among people of faith.

We urge you to vote against H.R. 1913 and to protect the First Amendment rights of people of faith. The types of stories we see in other countries that have passed “hate” crimes laws and the instances outlined in this letter are inconsistent with America’s rich tradition of

to love persons involved in the sexual immorality of homosexual behavior. “Swedish Minister Jailed for ‘Anti-Gay’ Speech,” Catholic World News, July 6, 2004. The pastor was ultimately exonerated by the Swedish Supreme Court, but only after an extensive appeal process. (See <http://www.alliancedefensefund.org/news/story.aspx?cid=3606>.)

freedom of expression and the free exercise of religion. H.R. 1913 is likewise inconsistent with those traditions and should not be passed out of this committee.

Sincerely,

Kevin H. Theriot

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