

## **A summary of the proposed Hate Crimes Prevention Act prepared by the Alliance Defense Fund**

The Hate Crimes Prevention Act of 2007 (S. 1105) is problematic for a variety of reasons, several of which are set forth herein.

- The Act is unnecessary. There is no evidence that so-called “hate crimes” are a problem of national concern, and no evidence that these crimes are not being adequately prosecuted by state and municipal governments. In fact, the evidence is to the contrary.
  
- The Act in certain of its anticipated applications is patently unconstitutional. It could criminalize certain protected thoughts, feelings, beliefs, and speech related to views in opposition to homosexual behavior.<sup>1</sup>
  
- The crucial phrase “bodily injury” in the Act is left undefined. (Under the terms of the Act, a person may not cause prohibited “bodily injury” because of sexual orientation.) Based on other federal statutes and regulations also using this term, it can mean *any* discomfort no matter how fleeting, including mental anguish. This authorizes prosecution for even nonviolent behavior such as mere unwanted religious expression opposing homosexual behavior, that leaves the listener upset.
  
- The Act would give “special victim” status to only certain politically favored groups, inexplicably leaving other categories of victims ignored by the federal government.

---

<sup>1</sup> There have been numerous efforts to ban politically incorrect thoughts and speech around the world in recent years. 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](http://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 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>.)

- The Act would, for the first time, make “sexual orientation” a category of specific recognition and special protection as a matter of legislated *national policy*. It will be accepted by homosexual activists as legislative vindication of sexually harmful and injurious immoral behavior. It would also unfairly leave all other persons with lesser levels of federal protection.

- The Act would validate a particular view on the highly controversial subject of “sexual orientation,” when there is no consensus on the meaning of that term. At least one federal court of appeal has stated that the amorphous concept of “sexual orientation” is not capable of serving as a legally recognizable or enforceable category of protected status. Indeed, for many in today’s culture, “sexual orientation” changes from partner to partner, and is simply incapable of lending itself to a fixed and permanent definition.

- The Act is unconstitutionally vague in its use of a number of critical terms, creating unacceptable confusion as to the application of this criminal law.

- The Act is aimed at punishing the *motive* for causing undefined “injury” to another person. This means that evidence including one’s religiously conservative magazine subscriptions, Christian websites visited, sermons preached (or listened to), books read (including the Bible), or church affiliation may all be introduced into evidence to prove one’s animus as to a particular “sexual orientation.”

- The Act contains no protection or exclusion for religious speech. (Representative Gohmert<sup>2</sup> (R-TX) shared this concern during the Judiciary

---

<sup>2</sup> Efforts to criminalize such expression have been attempted elsewhere. For example certain faculty members at the Ohio State University at Mansfield campus claimed that university librarian Scott Savage was guilty of prohibited threatening behavior for a simple statement rendered by Savage in 2006. His “threat” was recommending four books for freshman reading in his role as a member of OSU Mansfield’s First Year Reading Experience Committee. The four books were *The Marketing of Evil* by David Kupelian, *The Professors* by David Horowitz, *Eurabia: The Euro-Arab Axis* by Bat Ye’or, and *It Takes a Family* by Senator Rick Santorum. Three Mansfield professors filed complaints with OSU’s Office of Human Resources asserting that the suggested reading list made them feel “unsafe” on the campus. The Mansfield faculty voted without dissent to file charges of sex discrimination and harassment against Mr. Savage because they believed the recommendations constituted “anti-gay hate mongering.” The charges were not dismissed until the Alliance Defense Fund came to Mr. Savage’s defense. If freshmen reading conservative books amounts to a “hate” crime then this federal Hate Crimes law can be used for any mischievous purpose imagined by advocates of homosexual behavior.

Committee hearings on the Act in the House.  
<http://judiciary.house.gov/media/pdfs/transcripts/transcript070425.pdf>, page  
206.)

- The Act inserts the federal government intrusively into a realm historically and constitutionally reserved for the various states: local criminal law prosecution.

- The Act is not authorized by the Constitution in a number of its criminal prohibition applications, and the justifications included for its legitimacy are arguably pretexts that would not authorize all portions of the statute.