Why a Sexual Orientation and Gender Identity "Hate Crimes" Law Is Bad for You

Part 2: The irrelevant and inaccurate claim that this bill will not abridge your freedom of speech

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Proponents of the current "hate crimes" bill before the U.S. Senate argue that it is a lie that this bill will abridge in any way free speech protections for those who publicly express opposition to homosexual practice without causing, or attempting to cause, bodily harm. This claim is both irrelevant and inaccurate.

The first step of getting "sexual orientation" and "gender identity" in federal law

It is irrelevant because, as noted in Part 1, this bill does most of its damage in creating, for the first time in *federal* law, the special legal-protective categories of "sexual orientation" and "gender identity." The first hurdle is the biggest: getting the categories of "sexual orientation" and "gender identity" on the books. A "hate crimes" bill functions as—no double entendre intended—the Trojan horse of an aggressive gay/transgender lobby, offering to the public the "sexual orientation" and "gender identity" law least likely to meet with massive public resistance.

Once the Trojan Horse is within the city walls, the rest of the task is relatively easy. If "sexual orientation" and "gender identity" are special civil rights categories in federal law, then many other "sexual orientation" and "gender identity" laws must be passed if society is going to turn back the "homophobic hate" and "discrimination" that makes bodily crimes against homosexual and transgendered persons possible in the first place. President Obama and the Democratic-controlled Congress have already indicated their eagerness to advance this agenda (go here, here, here, and here).

Removing the explicit free-speech protection in the bill

The claim that this bill will not lead to an abridgement of free speech is not only irrelevant but also inaccurate. It is inaccurate, first, because the bill itself does not provide much in the way of protection of free speech rights. When it was first introduced into the House the bill contained this provision:

> Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit any expressive conduct protected from legal prohibition by, or any activities protected by **the free speech or free exercise clauses of, the First Amendment to** the Constitution. (bold added)

Democrats in committee removed the material in boldface so that what was voted on by the full House no longer contained the explicit mention of free speech and free exercise. The remaining phrase "expressive conduct protected …by the Constitution" begs the question about what "expressive conduct" is protected. No piece of legislation could abridge the Constitution anyway so the phrase is useless. The issue is what constitutes abridgement and that is *not* spelled out in this bill.

U.S. Code stipulating that inducement is as liable as commission

Second, it is inaccurate to claim that free speech will not be abridged inasmuch as other existing legislation requires an extension beyond actual physical violence.

United States Code Title 18, Section 2, stipulates that "whoever commits an offense against the United States or aids, *abets, counsels*, commands, *induces* or procures *its commission*, is punishable as a principal." Statements that "abet," "counsel," or "induce the commission" of bodily injury are thus not protected by the Constitution.

The omission of "any activities protected by the free speech or free exercise clauses" makes it that much easier to prosecute strong statements against homosexual practice as abetting or counseling violence or as inducing its commission. There is nothing in this bill that explicitly prevents any homosexualist-activist judge, of which there are many, from ruling that calling homosexual acts a grave "abomination" by appeal to Levitical prohibitions constitutes an inducement to violence.

The existence of state and local "hate crimes" law that include mere disturbance

Third, this "hate crimes" bill puts free speech in jeopardy because some state and local "hate crime" laws *already* make simple assault or intimidation prosecutable offenses.

For example, the Illinois Hate Crime Law permits prosecution for mere assault (i.e., a threat or action that puts a person in *apprehension* of bodily harm prior to any actual harm), property trespass, "disorderly conduct," or "harassment by telephone" or "electronic communications." "Disorderly conduct" is defined in Illinois law as a person who "does any act in such unreasonable manner as *to alarm or disturb another* and to provoke a breach of the peace" (emphasis added).

In 2007 two 16-year old girls from Crystal Lake South High School (Ill.) were arrested on felony hate crime charges for distributing about 40 fliers on cars in the student parking lot of their high school. The fliers contained an anti-homosex slur (the media have not reported what precisely the slur was) and a photo of two boys kissing, one of whom was identified as a classmate. The fliers contained no threats of violence. One of the girls was apparently getting back at a boy with whom she had once been best friend.

Assistant state's attorney for McHenry County, Thomas Carroll, commented: "You can be charged with a hate crime if you make a statement or take an action that inflicts injury or incites a breach of the peace based on a person's race, creed, gender, or perceived sexual orientation." Another assistant state's attorney, Robert Windon, said: "We do not feel this

type of behavior is what the First Amendment protects." State's attorney Lou Bianchi insisted: "This is a classic case of the kind of conduct that the state legislature was directing the law against. This is what the legislators wanted to stop, this kind of activity."

The girls spent 18 days in jail (a juvenile detention center) and appeared in court for their hearing with shackles on their ankles. They were ordered by the judge to remain in home detention on electronic monitoring until the court sentenced them some months later. Relieved that they would be allowed to return home for the time being, the girls sobbed uncontrollably in court. Prosecutors eventually dropped the felony hate-crime charge in exchange for a plea bargain, in which the girls pleaded guilty to lesser misdemeanor charges of disorderly conduct and resisting arrest (the girls fled the scene when a police officer arrived; they did not strike an officer).

The girls were sentenced to one year of probation, ordered to write letters of apology for distributing anti-gay fliers to the boy and the arresting officer, required to do 40 hours of community service, and given a two-week suspended sentence in the McHenry County Jail (to be implemented if the girls violated probation). The girls told the court that the whole matter was a joke that they took too far. State Attorney Louis Bianchi told the press that he still felt the hate crime charge was justified, while acknowledging that the plea bargain was fair for juveniles.

Conclusion

Claims that the homosexual and transsexual "hate crimes" bill soon to be voted on by the U.S. Senate will not lead to an abridgement of free speech rights and other liberties are both irrelevant and inaccurate.

They are *irrelevant* because the primary purpose of this bill is not to reduce "hate crimes" against homosexual and transgendered persons (laws against violent acts are already in place) but rather to establish "sexual orientation" and "gender identity" as specially protected classifications in federal law. This establishment will make possible—indeed, inevitable—an avalanche of other "sexual orientation" and "gender identity" laws that in turn make "hateful bigots" of anyone who opposes homosexual and transsexual behavior.

They are *inaccurate* because (1) the bill has already had stripped from it explicit free-speech protection; (2) the U.S. legal code already stipulates that verbal "inducement" of a crime makes the inducer "punishable as a principal"; and (3) the federal "hate crimes" law will work in tandem with state and local "hate crime" laws, some of which already make prosecutable any "alarming" or "disturbing" of another.

In Part 3 we will look at other instances where "sexual orientation" laws have led to the curtailment of civil liberties and explain why religious exemption clauses are worthless.

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