

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

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The so-called “[Local Law Enforcement Hate Crimes Prevention Act](#)” (H.R. 1913), passed by the U.S. House of Representatives along party lines on Apr. 29 and introduced into the U.S. Senate shortly thereafter by Ted Kennedy (S. 909), is improperly named. The bill is really a *hate-promotion* bill as regards the inclusion of “sexual orientation” and “gender identity” among the groupings slated to receive special protection.

I. Promoting hatred of people opposed to homosexual practice and transgenderism

Supporters of this bill who rightly believe homosexual practice to be unnatural and sinful have been duped into thinking that this bill is primarily about protecting homosexual and transgendered persons from violence. They hear the rubric “hate crimes” and think: Who can be for violence toward homosexual and transgendered persons?

A. The real objectives of the “hate crimes” bill (hint: it’s not about crime)

Supporters of this bill who believe homosexual practice to be immoral rarely stop to consider that all necessary laws are *already* in place protecting *everyone* from violent physical attacks or verbal threats to do bodily harm, including persons who engage in homosexual and transgendered behavior. Even homosexual columnist Andrew Sullivan has recently [commented](#): “The real reason for hate crime laws is not the defense of human beings from crime. There are already laws against that—and Matthew Shepard’s murderers were successfully prosecuted to the fullest extent of the law in a state with no hate crimes law at the time.” There is absolutely no evidence that state prosecutors are *systematically* ignoring *genuine* crimes against homosexual and transgendered persons, once *reported to law enforcement officials*.

So why pass “sexual orientation” and “gender identity” so-called “hate crime” legislation? The reason has more to do with foisting an expansive homosexualist agenda on the nation than with concerns about crime. The bill serves the following vital aims of that agenda:

- *It gets the federal government to enshrine in federal law “sexual orientation” (i.e. homosexuality and bisexuality) and “gender identity” (i.e. transsexualism and cross-dressing) as identity markers worthy of special protection and promotion alongside racial and gender diversity.*

- *This in turn gives federal backing to hatred of all persons who express opposition to homosexual practice and transgenderism as the moral equivalent of racists and misogynists (sexists), no matter how loving that expression of opposition may be.*
- *It also lays the foundation for a litany of future “sexual orientation” and “gender identity” bills that will markedly abridge the civil liberties of all who express moral disapproval of homosexual practice and transgenderism.*

B. The foot in the door

This “hate crimes” bill is the proverbial foot in the door or camel nose in the tent that makes possible—indeed inevitable—all future laws involving “sexual orientation” and “gender identity.” By simply placing “sexual orientation” and “gender identity” alongside of “race,” “color,” “national origin,” “gender,” and “disability,” this “hate crime” bill does most of its damage. It ensconces in federal law the principle that homosexuality, bisexuality, and transsexuality are as benign as race, gender, and disability—an aspect of human diversity that must be *affirmed and celebrated*. Those who refuse to go along with this principle then become encoded in law as hateful, discriminatory bigots.

Note that while “religion” (an identity marker involving choice) is one of the protected categories of this “hate crime” bill, the bill mainly makes a connection between “sexual orientation” and “gender identity” on the one hand and a host of benign innate conditions on the other (i.e. the five other protected categories of the bill). I’ve never heard an advocate for homosexual practice and transgenderism make the connection between these behaviors and religious belief. The analogy is *always* made with race and gender.

C. The thought crime of “prejudice” against homosexual and transgender behavior

Make no mistake about the fact that this is an Orwellian thought-crimes bill. Suppose a young man and a 70-year-old grandmother push each at roughly the same time. The man does so after shouting out “You bigoted homophobe!” while the grandmother does so after responding “Well then, you are a sexual pervert!”

This “hate crime” bill would apply only to the grandmother and would do so solely on the basis that she believed that homosexual practice was a perversion of the natural sexual order. For the bill establishes this conviction to be a “prejudice,” stating that the federal government can intervene when “a crime of violence ... is *motivated by prejudice* based on the actual or perceived ... sexual orientation [or] gender identity ... of the victim” (emphasis added). The bill effectively (but wrongly, go [here](#)) declares this conviction to be a hate that society must prosecute vigorously by enhancing penalties and calling for massive federal intervention.

However, the bill shows no concern for classifying as hateful prejudice the alternative conviction; namely, that advocates of a male-female requirement for sexual relations are hateful, ignorant bigots. Rather, the bill *promotes* this alternative conviction to society at large. It essentially declares to all sectors of society that it is “open season” on hating and ostracizing persons who find homosexual behavior and transsexualism to be morally repugnant, much as society hates and ostracizes members of the Klu Klux Klan or skinhead Nazi groups.

Recent cases in point are the widespread intimidation tactics employed by homosexualist opponents of California's Proposition 8 against its supporters (for example, go [here](#), [here](#), [here](#), [here](#), [here](#)) and the smear campaign against Miss California, Carrie Prejean, for daring to disagree with a homosexual pageant judge's affirmation of "gay marriage" (note that the point holds whatever Prejean's deficiencies may be as a role model for Christian sexual modesty). Why shouldn't those opposed to homosexual practice or transsexualism get special protection from the federal government? The reason is simple: They're bigots.

D. The analogy of other sexual orientations

This bill thus goes beyond protection of homosexual, bisexual, and transgendered persons (who are already protected) to promotion of hatred—hatred toward those opposed to homosexual and transgendered behavior. If you have any doubt about that, consider whether adding pedophilia ('pedosexuality') to the list would imply promotion of pedophilic behavior by the state and antagonism by the state toward perceived opponents of pedophiles. Surely it would.

Sadly, this may not be the best example since Rep. Steven King unsuccessfully introduced an amendment to the "hate crimes" bill in the House that would have excluded pedophilia from the definition of "sexual orientation." If you can believe it, the Democrats in the House Judiciary Committee defeated the amendment along party lines, 13-10. To be sure, the Democrats are right that both "pedosexuality," sexual desire for children, and "polysexuality," sexual desire for more than one person concurrently, are "sexual orientations." Where the Democrats err is in failing to recognize that this is a good reason for *not* having a "sexual orientation" provision.

E. Conclusion to Part I

So don't fall for the line that, if you really love "gay," lesbian, bisexual, and transgendered persons, you will support this "sexual orientation" and "gender identity" "hate crime" bill. No, support for this bill does not mean that you oppose hateful, violent acts against persons who self-identify as homosexuals, transsexuals, and cross-dressers. Existing laws already make that point. Rather, it means that you support stigmatizing, marginalizing, and penalizing people who, lovingly or not, oppose homosexual practice and transgenderism. This is a *hate-promotion* bill.

II. The irrelevant and inaccurate claim that this bill will not abridge your freedom of speech

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.

A. The first step of getting “sexual orientation” and “gender identity” in federal law

The claim is irrelevant because, as noted above, 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](#)).

B. 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.

C. 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 homosexual-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.

D. 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.

E. Conclusion to Part II

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.

III. Inroads against personal freedom already made in the United States by homosexual and transsexual political activism

Many proponents of “sexual orientation” and “gender identity” legislation contend that “sexual orientation” legislation will not endanger civil liberties in the United States—in Europe, Canada, and [Brazil](#), but not in the United States. The evidence to date suggests otherwise.

A. An example of hate-speech prosecution in Philadelphia

In Part 2 I cited the example of two teenage girls being prosecuted for sexual orientation “hate speech” under Illinois law. Another example occurred in Philadelphia a few years ago. District Attorney Lynne Abraham prosecuted a small group of Christians who were peacefully demonstrating at a homosexual parade in Philadelphia in 2004 (go [here](#) for video). The group comprised eleven persons from an organization called “Repent America,” including two grandmothers and a 17-year-old girl. All eleven spent 21 hours in jail. After a preliminary hearing Judge William Meehan ordered four of the eleven to stand trial on three felony charges and five misdemeanor charges (a fifth person, the teenage girl, was required to stand trial in juvenile court). The three felony charges were “ethnic intimidation” (proclaiming that homosexual practice was a sin), possession of instruments of crime (a bullhorn), and inciting a riot (reading from the Bible passages dealing with homosexual practice). These four Christian defendants faced up to 47 years in prison and fines of \$90,000 each.

Although Philadelphia County Court of Common Pleas Judge Pamela Dembe subsequently dismissed the criminal charges (after comparing the Repent America group to Nazis and the Klu Klux Klan), had the prosecutor Lynne Abraham been the judge (or perhaps had Judge Meehan been the judge instead of Dembe), the verdict would have

been quite different. That the prosecution was undertaken at all indicates that some legal authorities already believe that peaceful speech against homosexual practice is prosecutable. Expect judges to side with city prosecutors as the homosexualist agenda gains greater ascendancy through the passage of national “sexual orientation” legislation. Of note is the fact that in 2007 U.S. District Judge Lawrence Stengel ruled that the city of Philadelphia had a *right* to “exclude persons expressing contrary messages” from the vicinity of the “Outfest” parade even though the event was a admittedly a “public forum” conducted in a “public place” (namely city-owned streets and sidewalks; go [here](#)).

B. Other instances where “sexual orientation” legislation has already led to an abridgement of civil liberties

Certainly infringements of *speech* liberties have already taken place in all other Western democracies that have “sexual orientation” “hate crime” laws. In Canada, for example, among those fined thousands of dollars and threatened with imprisonment for repeat offenses of speech are:

- Father Alphonse de Valk and *Catholic Insight Magazine* for speaking against homosexual behavior.
- Bill Whatcott, a Catholic activist, for producing pamphlets that called homosexual practice immoral (Whatcott was also “banned for life” from criticizing homosexuality).
- Stephen Boisson, a pastor, for a letter to a newspaper denouncing homosexual practice as immoral (also ordered to desist from expressing his views on homosexual practice in any public forum; for a video go [here](#)).

The argument that free speech protections in the U.S. Constitution will prevent such abuses from taking place rings hollow in view of the inducement to violence provision in Title 18.2 and in view of the fact that even U.S. Supreme Court justices have taken to citing precedents in foreign law (e.g., with regard to the *Lawrence* sodomy decision).

Moreover, we already have instances in the U.S. where “sexual orientation” laws have led to abridgements of other liberties in three main areas:

- ***Mandatory indoctrination of children in public schools.*** Owing to state and local “sexual orientation” laws, children in many school systems throughout the country now face compulsory indoctrination, from first grade on, regarding the acceptability of both homosexual practice and transgenderism. Teachers are forbidden to say anything critical about any “sexual orientation” or “gender identity” and must undergo “sensitivity training” that normalizes such practices. Curricula at all levels are required to celebrate the homosexual and transgendered life. Provisions for parental notification and child opt-out provisions are refused on the grounds that the state has already declared “sexual orientation” and “gender identity” to be specially protected legal classifications. For examples go [here](#), [here](#), [here](#), [here](#), and [here](#).
- ***Terminating employees critical of homosexual practice.*** In 2008 an African-American woman, Crystal Dixon, was removed from her position as associate

vice president for human resources at the University of Toledo simply because she wrote an op-ed in a newspaper saying that homosexual behavior should not be compared to being black (go [here](#)). In 2007-8 a community college professor in California, June Sheldon, was fired for leading a brief discussion on the nature vs. nurture debate as regards homosexuality. Rolf Szabo, Richard Peterson, Kenneth Gee, Annie Coffey-Montes, and Albert Buonanno are previous examples of persons fired from their corporate or government jobs for not wanting to “celebrate” at their work station “sexual orientation” and “gender identity” diversity. For details go [here](#), [here](#), [here](#) (pp. 10-17).

- ***Forcing people against their conscience to promote the homosexual agenda through goods and services.*** The New Mexico Human Rights Commission just this past year ordered a female photographer to pay over \$6000 to a lesbian couple for declining to photograph their commitment ceremony on the grounds that it violated her Christian beliefs. A national Christian dating service (Harmony.com) was dragged into several years of litigation by the state of New Jersey for not providing services for homosexual partnering, until finally, out of financial desperation, the company capitulated to the state earlier this year. A Christian ministry in New Jersey has been subject to state investigation for refusing to allow a lesbian civil union ceremony to be conducted on its property. In California a doctor was sued for declining to artificially inseminate a woman in a lesbian relationship. In Georgia a counselor was fired just for referring a lesbian woman to another counselor for relationship advice. The Boy Scouts in Boston were no longer allowed free use of city facilities as a result of their policy against having scout leaders attracted to the same sex; they now had to pay tens of thousands of dollars to use the same facilities for which they previously paid not a cent. In New York City a school of medicine under Orthodox Jewish auspices was forced to rent married housing to homosexual couples under a “sexual orientation nondiscrimination” law, while in California a Lutheran high school was sued for expelling two girls in a lesbian relationship. Catholic Charities of Boston had to get out of the adoption business because it did not want to place children with persons engaged in a homosexual relationship. For details and further examples, go [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), [here](#) (2nd half), [here](#), [here](#).

Even legal experts who support homosexualist causes such as Eugene Volokh (UCLA) and Chai Feldblum (Georgetown University) have acknowledged that sexual orientation laws and their inevitable corollary, “gay marriage,” will ultimately force the end of “discriminatory” practices against homosexual persons by even “private entities, including Boy-Scout-like organizations, churches, religious universities, and other institutions” (so Volokh; go [here](#) and [here](#)).

C. Don’t be fooled by “religious exemptions”

Even if religious exemptions were to be added to any piece of “sexual orientation” legislation, they would be of little help, for two reasons.

First, religious exemptions are used as bait-and-switch tactics. As homosexualist forces tighten their hold on political rule expect such exemptions to be whittled away and ultimately eliminated. Just these past few weeks the New Hampshire House initially balked at providing the religious exemptions asked for by the governor in connection with a “gay marriage” bill. Eventually the House had to compromise with the governor to get the bill passed. The point here is that if homosexualist forces had the votes, they wouldn’t even have considered the exemptions. As culture continues to change, they and other legislative bodies will have the votes to refuse exemptions or overturn existing exemptions.

Second, in the interim let’s not forget that religious persons overwhelmingly work in secular venues where “sexual orientation” and “gender identity” laws and policies coerce their conscience and marginalize their existence to the equivalent of racists.

D. What does the future hold?

What else can we expect for the future? Religious institutions that “discriminate” against homosexual and transgender persons, including churches, will probably lose tax-exempt status. Religious schools will likely lose, in addition, federal grant money, access to student loans, and accreditation. Certainly these penalties already apply to religious institutions that discriminate on the basis of race (so the case of Bob Jones University). “Sexual orientation” laws equate sexual orientation with race as benign congenital conditions. Therefore we should expect the same rules to apply to religious institutions when they “discriminate” on the basis of “sexual orientation” and “gender identity.” All employers will have to subsidize homosexual relationships. Professional licensure for lawyers, mental health workers, etc. will require affirmation of homosexual unions and transgenderism. The list goes on and on.

E. Conclusion

Don’t believe anyone who claims that this “hate crimes” bill, with its special protections for “sexual orientation” and “gender identity,” won’t lead down the road to an abridgement of civil liberties for those who disapprove of homosexual and transgender behavior. All the evidence suggests otherwise. If you are tired of fighting these battles, just tell yourself that you haven’t seen anything yet. If this bill passes, the situation will continue worsening, not only for you but also (and especially) for your children. Is this an important issue, even a litmus test issue for determining which candidates for political office you will vote for? Well, can you think of any other religious belief that you hold for which you and your children could some day be ostracized, fined, fired, or worse? I can’t.

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