111TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 111–86

LOCAL LAW ENFORCEMENT HATE CRIMES PREVENTION ACT OF 2009

APRIL 27, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1913]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1913) to provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

79–006

THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Local Law Enforcement Hate Crimes Prevention Act of 2009".

SEC. 2. DEFINITION OF HATE CRIME.

In this Act—

(1) the term "crime of violence" has the meaning given that term in section 16, title 18, United States Code;

(2) the term "hate crime" has the meaning given such term in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note); and

(3) the term "local" means a county, city, town, township, parish, village, or other general purpose political subdivision of a State.

SEC. 3. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT OFFICIALS.

(a) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—At the request of a State, local, or Tribal law enforcement agency, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that—

(A) constitutes a crime of violence;

(B) constitutes a felony under the State, local, or Tribal laws; and

(C) is motivated by prejudice based on the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim, or is a violation of the State, local, or Tribal hate crime laws.

(2) PRIORITY.—In providing assistance under paragraph (1), the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than one State and to rural jurisdictions that have difficulty covering the extraordinary expenses relating to the investigation or prosecution of the crime.

(b) GRANTS.—

(1) IN GENERAL.—The Attorney General may award grants to State, local, and Indian law enforcement agencies for extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) OFFICE OF JUSTICE PROGRAMS.—In implementing the grant program under this subsection, the Office of Justice Programs shall work closely with grantees to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

(3) APPLICATION.—

(A) IN GENERAL.—Each State, local, and Indian law enforcement agency that desires a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

(B) DATE FOR SUBMISSION.—Applications submitted pursuant to subparagraph (A) shall be submitted during the 60-day period beginning on a date that the Attorney General shall prescribe.

(C) REQUIREMENTS.—A State, local, and Indian law enforcement agency applying for a grant under this subsection shall—

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State, local government, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, local, and Indian law enforcement agency has consulted and coordinated with nonprofit, nongovernmental violence recovery service programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINE.—An application for a grant under this subsection shall be approved or denied by the Attorney General not later than 30 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any single jurisdiction in any 1-year period.

(6) REPORT.—Not later than December 31, 2011, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2010 and 2011.

SEC. 4. GRANT PROGRAM.

(a) AUTHORITY TO AWARD GRANTS.—The Office of Justice Programs of the Department of Justice may award grants, in accordance with such regulations as the Attorney General may prescribe, to State, local, or Tribal programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 5. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of Justice, including the Community Relations Service, for fiscal years 2010, 2011, and 2012, such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of title 18, United States Code, as added by section 7 of this Act.

SEC. 6. PROHIBITION OF CERTAIN HATE CRIME ACTS.

(a) IN GENERAL.—Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

"§ 249. Hate crime acts

"(a) IN GENERAL.—

"(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

"(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

"(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

"(i) death results from the offense; or

"(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

"(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—

"(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person—

"(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

"(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

"(I) death results from the offense; or

"(II) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

"(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

"(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

"(I) across a State line or national border; or

"(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

"(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

"(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

"(iv) the conduct described in subparagraph (A)—

"(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

"(II) otherwise affects interstate or foreign commerce.

"(b) CERTIFICATION REQUIREMENT.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that—

"(1) such certifying individual has reasonable cause to believe that the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of any person was a motivating factor underlying the alleged conduct of the defendant; and

"(2) such certifying individual has consulted with State or local law enforcement officials regarding the prosecution and determined that—

"(A) the State does not have jurisdiction or does not intend to exercise jurisdiction;

"(B) the State has requested that the Federal Government assume jurisdiction;

"(C) the State does not object to the Federal Government assuming jurisdiction; or

"(D) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

"(c) DEFINITIONS.—

"(1) In this section—

"(A) the term 'explosive or incendiary device' has the meaning given such term in section 232 of this title; and

"(B) the term 'firearm' has the meaning given such term in section 921(a) of this title.

"(2) For the purposes of this chapter, the term 'gender identity' means actual or perceived gender-related characteristics.

"(d) RULE OF EVIDENCE.—In a prosecution for an offense under this section, evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense. However, nothing in this section affects the rules of evidence governing impeachment of a witness.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 13 of title 18, United States Code, is amended by adding at the end the following new item:

"249. Hate crime acts.".

SEC. 7. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 8. RULE OF CONSTRUCTION.

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 Constitution.

PURPOSE AND SUMMARY

H.R. 1913 would provide assistance to State and local law enforcement in the investigation and prosecution of hate crimes, and would amend chapter 13 of title 18, United States Code, to make certain assaults against persons of defined groups a crime.

BACKGROUND AND NEED FOR THE LEGISLATION

OVERVIEW

Bias crimes are disturbingly prevalent and pose a significant threat to the full participation of all Americans in our democratic society. Hate crimes involve the purposeful selection of victims for violence and intimidation based on their perceived attributes; they are a violent and dangerous manifestation of prejudice against identifiable groups.

As with most criminal activity, violent hate crimes can properly be investigated and prosecuted at both the Federal and State/local level, depending on the facts of the case and the needs of the investigation. The FBI has the most complete data, through voluntary reporting from law enforcement agencies around the country. But it is believed that violent hate crimes are significantly under-reported.

Since 1991, the FBI has identified over 118,000 reported violent hate crimes. For the year 2007, the most current data available, the FBI documented 7,624 hate crimes.[1] Racially-motivated bias accounted for approximately half (50.8%) of all incidents, religious bias accounted for 1,400 incidents (18.4%), sexual orientation bias for 1,265 incidents (16.6%), and ethnicity/national origin bias for 1,007 incidents (13.2%).

The Local Law Enforcement Hate Crimes Prevention Act is intended to address two serious limitations in the reach of the current Federal hate crimes statutes—principally, 18 U.S.C. § 245 (Interference with Federally Protected Activities) and 42 U.S.C. § 3631 (Interference with Housing). Enacted in 1968, these statutes prohibit violent hate crimes in a limited set of contexts, based on animus against the victim's race, color, religion, or national origin.[2]

There are two deficiencies in these statutes: First, the statutes are confined to hate-motivated violence in connection with the victim's participation in one of six narrowly defined "federally protected activities" (under 18 U.S.C. § 245) or in connection with housing (under 42 U.S.C. § 3631). Second, they provide little or no coverage whatsoever for violent hate crimes committed because of the victim's perceived sexual orientation, gender, gender identity, or disability. These deficiencies limit the Federal Government's ability to prosecute certain hate crimes, and its ability to assist State and local law enforcement agencies in the investigation and prosecution of many of the most heinous hate crimes.

The bill amends the Criminal Civil Rights Chapter (Chapter 13) of title 18 of the United States Code by creating a new section 249 to address the limited reach of existing law. Section 249 establishes two criminal prohibitions. In cases involving violence because of the victim's race, color, religion, or national origin, section 249(a)(1) prohibits the intentional infliction of bodily injury (or certain attempts) without regard to the victim's participation in specific enumerated activities. In cases involving certain violent crimes motivated by hatred based on the victim's actual or perceived sexual orientation, gender, gender identity, or disability, the new section

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[1] See U.S. Department of Justice, Federal Bureau of Investigations, 2007 Hate Crimes Statistics, available at www.fbi.gov/ucr/hc2007/incidents.htm.

[2] 42 U.S.C. § 3631 also punishes violent intimidation with housing activities when the victims are selected based on sex, handicap, and familial status.

249(a)(2) prohibits the intentional infliction of bodily injury when the incident has a nexus, as defined in the bill, to interstate commerce.[3] By expanding the reach of the Federal criminal laws to address both sets of limitations, section 249 provides the Federal Government the tools to effectively pursue the significant Federal interest in eradicating bias-motivated violence—both by assisting States and local law enforcement, and by pursuing Federal charges where appropriate.

It is important to emphasize that State and local authorities currently investigate and prosecute the overwhelming majority of hate crimes, and are fully expected to continue to do so under this legislation.[4] Concurrent Federal jurisdiction enables not only the devotion of Federal resources to assist State and local law enforcement in the investigation and prosecution of hate crimes, but also, in limited circumstances, to bring Federal criminal enforcement resources to bear as a "backstop" to State and local efforts. Such a backstop is important, for example, where the State does not have an appropriate statute, or otherwise declines to investigate or prosecute; where the State requests that the Federal Government assume jurisdiction; or where actions by State and local law enforcement officials leave demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

CURRENT LAW AND THE NEED FOR EXPANDED JURISDICTION TO FULFILL FEDERAL RESPONSIBILITIES OF SUPPORT, COOPERATION, AND BACKSTOPPING

Section 245(b) of title 18 has been the principal Federal hate crimes statute since its enactment in 1968. This section prohibits the use of force, or threat of force, to injure, intimidate, or interfere with (or to attempt to injure, intimidate, or interfere with) "any person because of his race, color, religion or national origin" with the intent to interfere with his or her participation in any of six specifically enumerated "federally protected activities."[5] Thus, to prove a violation of section 245(b), the Government must prove beyond a reasonable doubt two intents on the part of the accused: first, that the crime of violence was motivated by racial, ethnic, or religious hatred; and second, that it was committed with the intent to interfere with the victim's participation in one or more of the federally protected activities. Even in the most blatant cases of racial, ethnic, or religious violence, an accused has committed no Federal crime in violation of section 245(b) unless he is proved to have possessed both these intents.

The limited reach of section 245(b), cabined in particular by the "federally protected activity" requirement, has limited the ability of Federal law enforcement officials to work with State and local officials in the investigation and prosecution of many incidents of bru-

[3] The approach taken in this legislation is similar to that taken in the Church Arson Prevention Act of 1996, which also amended Chapter 13 of Title 18. See 18 U.S.C. § 247.

[4] From 1991–2005, the FBI has received reports of almost 114,000 hate crimes. During that period, however, the Department of Justice has brought fewer than 100 Federal cases under 18 U.S.C. § 245. For more information see http://www.fbi.gov/ucr/hc2005/index.html

[5] The six enumerated "federally protected activities" are: "(A) enrolling in or attending any public school or public college; (B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof; (C) applying for or enjoying employment, ***; (D) serving *** as grand or petit juror; E) traveling in or using any facility of interstate commerce, ***; (F) enjoying the goods [or] services [of certain places of public accommodation]." 18 U.S.C. § 245(b)(2).

tality and violence motivated by prejudice. Moreover, this intent requirement has led to acquittals in several of the cases in which the Department of Justice has assumed Federal jurisdiction and brought prosecutions under § 245(b)—even where the proof of racially motivated violence was not in doubt. Expanding the circumstances under which certain hate crimes can be prosecuted by removing the "federally protected activity" requirement, and permitting prosecution for bias-motivated crimes of violence that cause bodily injury (or a class of specified attempts) based on the victim's race, color, religion, or national origin, will thus (1) permit the Federal Government to provide assistance to State law enforcement in a wider range of circumstances, and (2) criminalize instances of vicious bias-motived crimes that presently fall outside the reaches of the Federal criminal laws.

Permitting the Federal Government to Assist State and Local Law Enforcement

Where Federal jurisdiction has existed in the limited circumstances covered by 18 U.S.C. 245(b), the Federal Government's resources, forensic expertise, and experience in the identification and proof of bias-motivated violence and criminal networks has provided an invaluable investigative complement to local investigators' familiarity with the local community. Through their cooperation, State and Federal law enforcement officials have brought a number of perpetrators of hate crimes to justice.

The investigation conducted into the death of James Byrd in Jasper County, Texas, is an excellent example of the benefits of an effective Federal/State investigative partnership in a high-profile hate crime case. Mr. Byrd was selected to be tortured and killed solely because of his race. From the time of the first reports of Mr. Byrd's death, the FBI collaborated with local officials in an investigation that led to the prompt arrest and indictment of three men on State capital murder charges. The resources, forensic expertise, and civil rights experience of the FBI and the Department of Justice provided valuable assistance to local law enforcement officials. The fact that the crime at issue appeared to violate established Federal criminal civil rights law was critical in the FBI's determination of its legal authority to lend assistance to the State prosecution.

It is also useful to consider the work in the mid-1990's of the National Church Arson Task Force, which investigated and prosecuted violations of 18 U.S.C. § 247. Section 247, which was enacted in 1988 and amended in the mid-1990's, does not have limitations analogous to the "federally protected activity" requirement of 18 U.S.C. § 245(b)(2). Created to address a rash of church fires across the country, the Task Force's Federal prosecutors and investigators from the Bureau of Alcohol, Tobacco, and Firearms and the FBI collaborated with State and local officials in the investigation of every church arson that had occurred since January 1, 1995. The results of these State/federal partnerships were extraordinary: 34% of the joint investigations conducted during the 2-year life of the Task Force resulted in arrests on State or Federal charges,[6] more

[6] See Statement of Eric H. Holder, Jr., Deputy Attorney General, U.S. Department of Justice, May 11, 1999, available at www.usdoj.gov/archive/dag/testimony/daghate051199.htm.

than double the 16% national arrest rate in arson cases generally (most of which are investigated without Federal assistance). More than 80% of the suspects arrested in joint investigations during the life of the Task Force were prosecuted in State courts under State laws.[7]

By expanding the reach of Federal criminal law, this bill will similarly expand the ability of the FBI and other Federal law enforcement entities to provide assistance to State law enforcement authorities. It is expected that this cooperation will result in an increase in the number of hate crimes solved by arrests and successful prosecutions, in the same way that the devotion of Federal law enforcement resources increased the number of arrests and prosecutions in the church arson context. And as with church arson, it is expected that a large majority of hate crimes prosecutions will continue to be brought in State court, under State law.[8]

Ensuring that Important Federal Civil Rights Interests are Vindicated

H.R. 1913 will enable the Federal Government to prosecute hate crimes where there is a significant Federal interest that is not otherwise being addressed. Where State and local prosecutors fail to bring appropriate State charges, or where State laws or State prosecutions are inadequate to vindicate the Federal interest, it is imperative that the Federal Government be able to step in and bring effective Federal prosecutions to "backstop" State and local law enforcement.

Juror accounts in several Federal hate crimes prosecutions resulting in acquittal suggest that the double intent requirement in section 245(b)(2), particularly the "intent to interfere with the specified federally protected activity," has frustrated the aims of justice. In testimony before this Committee, former Deputy Attorney General Eric Holder discussed a case in Texas in which the jury acquitted three white supremacists of Federal criminal civil rights charges arising from unprovoked assaults upon African-Americans, including one incident in which the defendants knocked a man unconscious as he stood near a bus stop.[9] Some of the jurors revealed after the trial that although the assaults were clearly motivated by racial animus, there was no apparent intent to deprive the victims of the right to participate in any "federally protected activity."

Another section 245(b)(2) case that ended in acquittal involved the prosecution of a notorious serial murderer and white supremacist for shooting then-Urban League President Vernon Jordan as he walked from a car toward his motel room (a place of "public accommodation") in Fort Wayne, Indiana. Following an acquittal, several jurors advised the press that although they were persuaded that the defendant committed the shooting because of Mr. Jordan's race, they did not believe that the shooting was intended to interfere with Mr. Jordan's use of the hotel facilities. The shooter later admitted that he targeted Mr. Jordan as part of a crusade to eradicate Blacks, Jews, and "race-mixers." [10]

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[7] Id.

[8] Hate Crimes Violence, Hearings Before the House Comm. on the Judiciary, 106th Congress 13, 17–18 (1999) (Testimony of Eric Holder, Deputy Attorney General).

[9] Id.

[10] Id.

In each of these examples, one or more persons committed a heinous act of violence clearly motivated by the race, color, religion, or national origin of the victim. In each instance, local prosecutors failed to bring State criminal charges. Yet in each case, the double intent requirement prevented the Department of Justice from vindicating the Federal interest in the punishment and deterrence of hate-based violence.

The current Federal hate crimes statute turns on such arbitrary distinctions as whether a racially motivated assault occurs on a public sidewalk as opposed to a private parking lot across the street, or whether a convenience store where such an assault occurs has a video game inside that might qualify the store as a "place of entertainment." The Federal Government's authority to participate in State-Federal investigative partnerships, or to step in and play a backstop role when necessary, should not hinge upon such unnecessary, anachronistic distinctions. And with the addition of section 249(a)(1) by this legislation this will no longer be the case.

HATE CRIMES BASED ON SEXUAL ORIENTATION, GENDER, GENDER IDENTITY, OR DISABILITY

Law enforcement authorities and civic leaders have learned that a failure to address the problem of hate crimes can cause a seemingly isolated incident to fester into wide-spread tension that can damage the social fabric of the community at large. The Supreme Court recognized this important factual distinction in *Wisconsin v. Mitchell,* 508 U.S. 476, 487 (1993) as meriting the designation of a hate crime as a specific offense: "it is but reasonable that among crimes of different natures those should be most severely punished, which are the most destructive of the public safety and happiness." [11]

The existing Federal hate crimes laws do not cover hate crimes committed because of bias based on the victim's actual or perceived sexual orientation, gender, gender identity, or disability. There is an emerging consensus, however, that hate crimes motivated by such biases are equally deserving of prosecution.

Notably, in 1994, Congress passed legislation directing the United States Sentencing Commission to promulgate a sentencing enhancement for crimes committed on account of the victim's actual or perceived sexual orientation, gender, or disability.[12] Further, since 1994, gender identity has been added to numerous State and local hate crimes statutes based on the same understanding of the corrosive effects of bias-motivated violence, and in recognition

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[11] Quoting 4 W. Blackstone, Commentaries.

[12] The Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, § 280003a, provides:

> DIRECTION TO UNITED STATES SENTENCING COMMISSION REGARDING SENTENCING ENHANCEMENTS FOR HATE CRIMES.
>
> (a) DEFINITION.—In this section, "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.
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> (b) SENTENCING ENHANCEMENT.—Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to provide sentencing enhancements of not less than 3 offense levels for offenses that the finder of fact at trial determines beyond a reasonable doubt are hate crimes. ***.

of the the fact that this particular bias has been behind particularly violent assaults.[13]

The following facts support an extension of Federal jurisdiction to cover bias crimes committed on the basis of these prejudices.

Sexual Orientation

Statistics gathered by the Federal Government and private organizations indicate that a significant number of hate crimes based on the sexual orientation of the victim are committed every year in the United States. According to 2007 FBI statistics, hate crimes based on the victim's sexual orientation—gay, lesbian, or bisexual—constituted the third highest category reported—1,265 incidents, or one-sixth of all reported hate crimes.[14] From 1991 through 2005, there were over 17,000 reported hate crimes based on sexual orientation. And as noted previously, this figure is likely to significantly understate the true number of these crimes.

Many victims of anti-lesbian and anti-gay violence do not report the crimes to local law enforcement officials. In fact, according to Austin, Texas Police Commander Gary Olfers, hate crimes are the "number 1 under-reported crime in the state." And "[d]espite underreporting, the trend in State statistics shows that gays and lesbians are increasingly the targets of crime." [15]

Despite the prevalence of violent acts committed against persons because of their sexual orientation, such crimes are not covered by 18 U.S.C. § 245 unless there happens to be some recognized basis for Federal jurisdiction, such as bias against a gay victim's race. Accordingly, the Federal Government has been without authority to work in partnership with local law enforcement officials, or to bring Federal prosecutions, when gay men or lesbians are the victims of murders or other violent assaults because of bias based on their sexual orientation.

The murder of Matthew Shepard in Laramie, Wyoming, is a stark example of the limitations of Federal law. Despite the clear evidence that the murder of Mr. Shepard was motivated by animus based on his sexual orientation, the Federal Government lacked jurisdiction under existing hate crimes law either to investigate this horrifying crime in partnership with State and local officials or, if necessary, to bring Federal hate crimes charges. As a result, according to Commander David O'Malley—the chief investigator in the Shepard murder case—"the Albany County Sheriff's office had to furlough five investigators because of soaring costs" associated with handling the case without any financial or investigatory support from the Federal Government.[16]

The situation confronting the Albany County Sheriff's office in the Shepard case stands in marked contrast to what occurred in the above discussed Jasper, Texas case. Because the murder of

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[13] See, Hate Crime Laws, Transgender Law & Policy Institute, www.transgenderlaw.org/hatecrimelaws/index.htm (State survey of legal policy).

[14] Federal Bureau of Investigations, 2007 Hate Crimes Statistics.

[15] Dallas Morning News, Nov. 8, 1999 ("Hate-crimes experts say statistics don't tell story: Many cases unreported; special law rarely used").

[16] Excerpts of press statement by Commander David O'Malley, September 12, 2000. In a November 11, 1999, letter to Speaker Dennis Hastert, Sheriff James Pond and detective Sergeant Robert DeBree of the Albany County Sheriff's Department wrote: "We believe justice was served in this case [Shepard], but not without cost. We have been devastated financially, due to expenses incurred in bringing Matthew's killers to justice. For example, we had to lay off five law enforcement staff."

James Byrd, Jr. was covered under the existing Federal hate crimes statutes, the local law enforcement agency in Jasper received forensic assistance and nearly $300,000 from the Federal Government to help cover the costs associated with successfully prosecuting Mr. Byrd's killers.

Gender

Although acts of violence committed against women traditionally have been viewed as "personal attacks" rather than as hate crimes, a significant number of women are exposed to terror, brutality, serious injury, and even death because of their gender. Indeed, Congress, through the enactment and reauthorization of the Violence Against Women Act (VAWA), recognized that some violent assaults committed against women are bias crimes rather than mere "random" attacks.[17]

The majority of States do not have statutes that specifically prohibit gender-based hate crimes. Although all 50 States have statutes prohibiting rape and other crimes typically committed against women, only 28, plus the District of Columbia, have hate crimes statutes that include gender among the categories of prohibited bias motives.[18] The bill will harmonize Federal hate crimes law with the premise of VAWA, enabling Federal officials to work with State and local law enforcement officials in the investigation and prosecution of violent gender-based hate crimes.

It is important to emphasize in this regard that the bill will not result in the federalization of all rapes, other sexual assaults, or acts of domestic violence. Rather, as discussed below in greater detail, the legislation has been drafted to ensure that the Federal Government's investigations and prosecutions of gender-based hate crimes will be strictly limited to those crimes that are motivated by gender-based animus, and thus implicate the greatest Federal interest.

Gender Identity

Hate crimes against transgender people tend to be particularly violent, the product of extreme bias against gender nonconformity. While there are no federally compiled statistics, advocacy groups have reported that over 400 people have been murdered due to anti-transgender bias since 1999.[19] In 2008 alone, there were 21 murders of transgender and gender non-conforming people.

Compounding the other challenges with effectively prosecuting and deterring these crimes, transgender people frequently distrust local law enforcement authorities, and the police often lack training and familiarity with transgender people. This lack of understanding highlights the need for a Federal backstop for State and local authorities, particularly in cases where the local law enforcement authorities exhibit intolerance, or fail to investigate or prosecute.

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[17] Sen. Rep. No. 103–138 (1993) (testimony of Prof. Burt Neuborne).

[18] See Anti-Defamation League, State Hate Crime Statutory Provisions, www.adl.org/99hatecrime/state__hate__crime__laws.pdf (State survey of hate crime laws).

[19] According to an estimate by the Human Rights Campaign, transgender Americans face a one-in-twelve chance of being murdered. Statistics from the Gay, Lesbian and Straight Education Network (GLSEN) show that in schools 14.2% of transgender students report being physically assaulted as a result of their gender expression, while 30.4% experienced physical harassment. Gay & Lesbian Alliance Against Defamation, www.glaad.org/publications.

The murder of Brandon Teena, dramatized in the movie "Boys Don't Cry," is illustrative of the plight of this community. Even in cases where the crime is reported, police response is often inadequate. Teena was raped, and later killed, after the discovery of his biological gender by two acquaintances. He had reported his rape and beating, but the Richardson County, Nebraska Sheriff (who referred to Teena as "it") would not allow an arrest. Five days later, Teena was stabbed and beaten to death by the same perpetrators. In the civil suit brought by Teena's family, the court found that the county was partially responsible for Teena's death, and characterized the sheriff's behavior as "extreme and outrageous." [20]

Currently, 13 States include protections for transgender individuals in their hate crime laws.[21] Additionally, 13 States and 93 local jurisdictions do so in their anti-discrimination laws.[22] There has also been explicit coverage of gender identity in the policies of leading corporations, where they have concluded that certain human resources cases are not purely based on gender or sexual orientation.[23] These policies have helped shape public discourse on addressing the rights of transgender people, along with the rights of lesbian, gay, and bisexual persons. According to a poll commissioned by the Human Rights Campaign Foundation in 2002, 68% of Americans believe that the Federal Government needs laws to protect against anti-transgender hate crimes.[24]

Disability

Congress has shown a consistent and durable commitment, over more than two decades, to the protection of persons with disabilities from discrimination based on their disabilities. Beginning with the 1988 amendments to the Fair Housing Act, and continuing with the Americans with Disabilities Act of 1990, Congress has extended civil rights protections to persons with disabilities in many traditional civil rights contexts. Currently, 24 States plus the District of Columbia have hate crime statutes that reach crimes of violence motivated by animus based on the victim's disability.[25] Concerned about the problem of disability-based hate crimes, Congress also amended the Hate Crimes Statistics Act in 1994 to require the FBI to collect information about such hate-based incidents from State and local law enforcement agencies.[26]

H.R. 1913 would take the important step of making Federal hate crimes law consistent in this area with the Federal position taken in other areas of civil rights law, and harmonizing it with the hate crimes laws of most States.

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[20] Omaha World-Herald, April 21, 2001; Assoc. Press, Oct. 5, 2001; N.Y. Times, April 21, 2001; Chi. Trib., April 21, 2001.

[21] See Hate Crime Laws, Transgender Law & Policy Institute. For the purposes of this legislation, Gender Identity is defined as "actual or perceived gender-related characteristics." See H.R. 1913 Section 6(c). While some States have prosecuted Gender Identity hate crimes under their gender or sexual orientation jurisdiction, those definitions provide a somewhat inexact fit for the underlying bias reflected against transgender persons and necessitate a separate Federal classification.

[22] See Hate Crime Laws, Transgender Law & Policy Institute.

[23] This list includes 53 of the Fortune 500 including AT&T, IBM and Toys 'R' Us.

[24] See, www.genderadvocates.org/News/HRC%20Poll.html.

[25] See Anti-Defamation League, State hate Crime Statutory Provisions.

[26] See 28 U.S.C. § 534 note.

The Propriety of the Particular Group Designations

Throughout the course of debate on this legislation, opponents have suggested that the classifications of sexual orientation, gender, gender identity, and disability do not merit specific protection under Federal law, or do not share commonality with other protected classifications. Such suggestions, however, are inconsistent with the overwhelming preponderance of historical facts. As noted above, these classifications are linked by jurisprudence,[27] and by their inclusion together in numerous State and Federal criminal and anti-discrimination law statutes.

Opponents offered a series of amendments during markup of the bill that would have added coverage for a disparate collection of groups, ranging from seniors to veterans to U.S. citizens to everyone who had any characteristic whatsoever. No evidence was offered, however, to show any record of group-based violence against these classifications, or even a widely held societal prejudice. Contrary to suggestions, it is not difficult to determine whether a particular group faces substantial societal prejudice that makes it appropriate to protect against the kinds of hate-based violent crimes covered by this bill.

One test for manifestation of prejudice is captured by the widely recognized Allport Scale.[28] As the logic of the test demonstrates, the classifications of sexual orientation, gender, gender identity, and disability share a common history of being targeted for hate-based violence, along with the classifications found in 18 U.S.C. 245. Indeed, the classifications offered by amendments are ones held in wide esteem; many already have privileged legal status, special protection under separate criminal statutes, or special eco-

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[27] See, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377 (1992); Wisconsin v. Mitchell, 508 U.S. 47 (1993).

[28] The measure was devised by psychologist Gordon Allport and has been cited widely by the Federal judiciary. See, e.g., City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 464 (1985) (Marshall, J. dissenting) (home for mentally ill); Castaneda v. Partida, 430 U.S. 482, 503 (1977) (Marshall, J. dissenting) (grand jury composition); Dukes v. Waitkevich 429 U.S. 932 (1976) (Marshall, J. dissenting) (effect of rape/miscegenation allegations); Frazier v. Heebe, 788 F.2d 1049, 1058 (5th Cir. 1986) (residence requirement for bar admission); Stevens v. Dobs, Inc., 483 F.2d 82 (4th Cir. 1973) (housing discrimination); U. S. ex rel. Haynes v. McKendrick, 481 F.2d 152, 157 (2d Cir. 1973) (prejudice in jury selection); Miller v. U.S., 320 F.2d 767, 772 (D.C. Cir. 1963) (inferences of guilt).

> Allport's Scale of Prejudice ranges from 1–5.
>
> Scale 1, Antilocution—Antilocution means a majority group freely make jokes about a minority group. Speech is in terms of negative stereotypes and negative images. This is also called hate speech. It is commonly seen as harmless by the majority. Antilocution itself may not be harmful, but it sets the stage for more severe outlets for prejudice.
>
> Scale 2, Avoidance—People in a minority group are actively avoided by members of the majority group. No direct harm may be intended, but harm is done through isolation.
>
> Scale 3, Discrimination—Minority group is discriminated against by denying them opportunities and services and so putting prejudice into action. Behaviours have the specific goal of harming the minority group by preventing them from achieving goals, getting education or jobs, etc. The majority group is actively trying to harm the minority (e.g. Jim Crow laws).
>
> Scale 4, Physical Attack—The majority group vandalize minority group things, they burn property and carry out violent attacks on individuals or groups. Physical harm is done to members of the minority group. Examples are lynchings of blacks, pogroms against Jews in Europe, tarring and feathering Mormons in 1800's and British Loyalists in the 1700's.
>
> Scale 5, Extermination—The majority group seeks extermination of the minority group. They attempt to eliminate the entire group of people (e.g., Indian Wars to remove Native Americans, Final Solution of "Jewish Problem" in Germany, and Ethnic cleansing in Armenia.).

Gordon Allport, The Nature of Prejudice (Addison-Wesley 1954).

nomic recognition. These kinds of classifications clearly fall outside the scope of legislation that is focused on crimes of violence motivated by societal hate and prejudice.

LEGAL ANALYSIS

Federalism Concerns as to Section 249(a)(2)

The bill was carefully drafted to ensure that the Federal Government will continue to limit its prosecutions of hate crimes—particularly those motivated by actual or perceived animus based on gender—to the small set of cases that implicate the greatest Federal interest and present the greatest need for Federal intervention. This bill is not intended to federalize, for example, all rapes, sexual assaults, acts of domestic violence, or other gender-based crimes.

The express language of Section 7(b) sets forth several significant limiting principles. First, the bill requires proof that the violence be motivated by animus based on actual or perceived sexual orientation, gender, gender identity, or disability. This statutory animus requirement, which the Government must prove beyond a reasonable doubt, will limit the pool of potential Federal cases to those in which the evidence of bias motivation is sufficient to distinguish them from ordinary crimes of violence left to State prosecution.

Second, the bill requires a nexus to interstate commerce for all Federal hate crimes based on sexual orientation, gender, gender identity, or disability. This interstate commerce requirement, which the Government must prove beyond a reasonable doubt, will limit Federal jurisdiction in these new categories to cases that implicate Federal interests.

Third, the bill limits Federal hate crimes based on sexual orientation, gender, gender identity, or disability to those involving bodily injury or death (and a limited set of attempts to cause bodily injury or death). These limitations will confine Federal cases to truly serious offenses. All violations of Section 249 are felonies; there are no misdemeanor provisions that could potentially permit Federal involvement in prosecuting minor offenses.

Finally, the bill requires certification, by the Attorney General or other specified high-ranking, Department of Justice official, that: "(1) he or she has reasonable cause to believe that the actual or perceived race, color, national origin, religion, sexual orientation, gender, gender identity or disability of any person was a substantial motivating factor underlying the defendant's conduct; and (2) that he or his designee, or she or her designee, has consulted with State or local law enforcement officials regarding the prosecution and determined that: (a) the State does not have jurisdiction or refuses to assume jurisdiction; or (b) the State has requested that the Federal Government assume jurisdiction; (c) the State does not object to the Federal Government assuming jurisdiction; or (d) actions by State and local law enforcement officials have left demonstrably unvindicated the Federal interest in eradicating bias-motivated violence." This certification requirement is intended to ensure that the Federal Government will assert its new hate crimes jurisdiction only in a principled and properly limited fashion, and is in keeping with procedures under the current Federal hate crimes statute.

Additionally, based upon the testimony of Justice Department officials, we expect the efforts of the Department under the new sub-

stantive provisions of this legislation to be guided by Department-wide policies that impose additional limitations on the cases prosecuted by the Federal Government, most notably Section 8-3.000 of the United States Attorneys Manual.[29] Section 8-3.000 governs the interaction of Federal investigative and prosecutive offices in criminal civil rights matters. The notification and approval procedures of that Section ensure conformity in application of Federal laws, opening investigations, and staffing cases. The review processes set forth in the U.S. Attorney's Manual will provide an important safeguard against overly expansive enforcement or untested theories being brought by individual prosecutors or agents.

Constitutionality (Sections 249(a)(1) and 249(a)(2))

The bill is consistent with a long history of Federal involvement in combating criminal conduct. As the Department of Justice articulated in a 2000 Statement of Administration Position, the 13th amendment broadly authorizes Congress to regulate acts of violence committed on the basis of race, color, religion, or national origin.[30]

As to actual or perceived sexual orientation, gender, gender identity or disability, the Commerce Clause provides Congress ample authority to prosecute acts of violence motivated by animus based on these characteristics where the act has the requisite connection to interstate commerce. To avoid constitutional concerns arising from the decision in *United States v. Lopez,* 514 U.S. 549 (1995), the bill requires that the Government prove beyond a reasonable doubt, as an element of the offense, a nexus to interstate commerce in every prosecution brought under one of the newly created categories of 18 U.S.C. 249(a)(2).

This interstate commerce element was drafted to invoke the full scope of Congress's Commerce Clause power, and to ensure that hate crimes prosecutions brought under the new 18 U.S.C. 249(a)(2) will not be mired in constitutional litigation. The interstate commerce nexus required by the bill is analogous to that required in other Federal criminal statutes. The Church Arson Prevention Act of 1996, 18 U.S.C. § 247, for example, makes it a crime to destroy religious property if the offense "is in or affects interstate commerce." 18 U.S.C. § 247(b). Section 249 in the bill is drawn to comport with Supreme Court guidance in *Lopez* and *U.S. v. Morrison,* 529 U.S. 598 (2000) (setting forth outer reaches of commerce power in invalidating civil provisions of Violence Against Women Act).

Finally, to the extent that there may be open questions regarding the precise contours of the range of circumstances under which the enforcement provision of the 13th amendment authorizes Congress to criminalize hate crimes committed on the basis of religion, the legislation has included hate crimes based on religious beliefs in both 18 U.S.C. 249(a)(1), which is based on Congress' enforcement powers under the 13th amendment and does not require proof of a nexus to interstate commerce, and 18 U.S.C. 249(a)(2), which is based on Congress' powers under the Commerce Clause and contains an interstate commerce element that must be proved by the

[29] See Testimony of Eric Holder, Deputy Attorney General, 106th Congress 13, 17–18 (1999).
[30] Statement of Administration Position, June 13, 2000 (Assistant Attorney General Robert Raben).

Government beyond a reasonable doubt in each case.[31] The inclusion of religion in both subsection (a)(1) and subsection (a)(2) will enable prosecutors to determine, based on the facts of each case before them, how best to proceed in light of possible constitutional challenges that might be brought.

Free Speech

The bill has been crafted in a fashion that fully protects first amendment and other constitutional rights. The bill is designed only to punish violent acts, not beliefs or thoughts—even violent thoughts. The legislation does not punish, nor prohibit in any way, name-calling, verbal abuse, or expressions of hatred toward any group, even if such statements are hateful. Moreover, nothing in this legislation prohibits the lawful expression of one's deeply held religious or personal beliefs. The bill only covers violent actions that result in death or bodily injury committed because the victim has one of the specified actual or perceived characteristics.

In addition, 249(d) provides that evidence of association or expression may not be introduced as substantive evidence at trial (though such evidence may be used as impeachment) unless it specifically relates to the offense. This provision is written to harmonize competing interests—it recognizes the need to protect first amendment rights to express unpopular beliefs, but recognizes the need to permit the proper use of evidence of an accused's statements and associations when they specifically relate to the offense.

This provision ensures that evidence of mere expression or association is not permitted to be introduced at trial—that a person has expressed beliefs, for example, including religious beliefs, or belongs to an organization, including a religious organization, that holds or professes beliefs, that may be consistent with the crime charged. The provision recognizes that the use of an individual's statements or associations may well be unfairly prejudicial if there is little other evidence linking the accused to the offense.

It is not possible to provide a complete set of examples that capture the range of circumstances where such expressions or associations would be admitted or excluded. Nonetheless, this provision requires the district court to employ, in essence, a heightened relevance standard that takes into account the policy values associated with protecting the rights of free religious expression, free speech, and free association, and to consider the potential for unfair prejudice if the evidence at issue consists of unpopular speech or association with an unpopular group. This provision also recognizes that evidence of speech, conduct or associations of an accused is not unfairly prejudicial if it can be shown to be specifically related to the crime at issue.

An isolated racial slur remote in time to the charged offense, or mere membership in an organization that professes strong negative views toward a given group would, presumably, be excluded. Even an incidental racial slur uttered in the course of the crime might

[31] The scope of the 13th amendment, and Congress's power to regulate thereunder, was considered by the Supreme Court in Saint Francis College v. Al-Khazraii, 481 U.S. 604, 613 (1987) and Shaare Tefila Congregation v. Cobb, 481 U.S. 615, 617–18 (1987). In those cases, the Court held that civil anti-discrimination statutes enacted under the 13th amendment during Reconstruction apply to religions, at least to the extent that such religions were seen as "races" at the time.

be excluded if it were clear that it was not the motive—uttered in the course of an otherwise ordinary robbery, for example.

In contrast, a violence-themed set of statements displaying animus toward the victim's group, or statements evidencing hatred of a given group, persisting over a lengthy period or close in time to the alleged offense, made in a way that indicates that such hatred is the motive for the violence, are more likely to be properly admitted as evidence. In these examples, there would need to be other independent evidence of the accused's participation in the crime, and the court would retain the discretion to determine that the particular evidence was otherwise unfairly prejudicial.

Moreover, this provision does not provide a license to commit perjury. If a witness, for example, were to deny knowing the accused, the witness could be impeached by showing they belonged to the same organization and were in each other's company. If an accused were to deny having animus toward the victim's group, he or she could be impeached by prior statements the accused has made that expressed such animus—even if they had been excluded in the government's case in chief because they were remote in time. This comports with the overarching goals of the Federal Rules of Evidence that deny a witness safe harbor to commit perjury, by ensuring that a witness who gives false testimony may be impeached.

The legislation also includes a "rule of construction" in Section 8, to lay to rest concerns raised in the 110th Congress mark-up of the legislation, and repeated since then, that religious speech or expression by clergy could form the basis of a prosecution. The rule of construction affirms that nothing in this legislation "shall be construed to prohibit any expressive conduct protected from legal prohibition by, or any activities protected by, the Constitution." Nothing in this legislation would prohibit the constitutionally protected expression of one's religious beliefs.

Finally, any lingering doubts about the constitutionality of hate crimes laws were squarely addressed by the Supreme Court in the early 1990's in two cases, *R.A.V. v. City of St. Paul,* 505 U.S. 377 (1992) and *Wisconsin v. Mitchell,* 508 U.S. 476 (1993). In *Wisconsin v. Mitchell*, the Supreme Court clarified that the first amendment does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent. These cases clearly demonstrate that a hate crimes statute may consider bias motivation when that motivation is directly connected to a defendant's criminal conduct. By requiring this connection to criminal activity, this legislation does not chill protected speech, and does not violate the first amendment.

HEARINGS

In the last Congress, the Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on substantially identical legislation, H.R. 1592, on April 17, 2007. Testimony was received from Mark L. Shurtleff, Attorney General of the State of Utah; Timothy Lynch, Director, Project on Criminal Justice, Cato Institute; Frederick M. Lawrence, Dean, the George Washington University Law School; David Ritcheson, Harris County, Texas; Brad W. Dacus, President, Pacific Justice Institute; and, Jack McDevitt, Associate Dean, Northeastern University. That bill

was reported by the Judiciary C0ommittee on April 30, 2007, and passed the House on May 3, 2007.

COMMITTEE CONSIDERATION

On April 22, 2009, the Committee met in open session and ordered the bill H.R. 1913 favorably reported with amendment, by a rollcall vote of 25 to 12, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 1913:

1. An amendment by Mr. Goodlatte to broaden the protected classes in the bill to include status as a senior citizen who has attained the age of 65 years. Defeated 15 to 11.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman			
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Ms. Wasserman Schultz			
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	11	15	

2. An amendment by Mr. Franks to bar prosecution where the offender was, at the time of the offense, engaged in conduct protected by the first amendment to the Constitution. Defeated 16 to 11.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman			
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Gonzalez		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Ms. Wasserman Schultz		X	
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney	X		
Mr. Harper			
Total	11	16	

3. An amendment by Mr. Rooney to include in the bill crimes where the victim's status was that of a member of the armed forces. Defeated 11 to 9.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei			
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	9	11	

4. An amendment by Mr. Gohmert to add the death penalty to the penalty provision of the bill. Defeated 11 to 8.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner			
Mr. Schiff		X	
Ms. Sánchez			

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Ms. Wasserman Schultz			
Mr. Maffei			
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.			
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan			
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	8	11	

5. An amendment by Mr. Gohmert to the Department of Justice Certification Provision to add a requirement that a State has no law prohibiting the conduct constituting the defendant's alleged crimes before allowing the assertion of Federal jurisdiction. Defeated 12 to 9.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner			
Mr. Schiff		X	
Ms. Sánchez			
Ms. Wasserman Schultz		X	
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan			
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	9	12	

6. An amendment by Mr. Gohmert to add a Rule of Construction that no prosecution may be based in whole or in part on religious beliefs quoted from the Bible, the Tanakh, or the Koran. Defeated 11 to 8.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner			
Mr. Schiff			
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan			
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	8	11	

7. An amendment by Mr. King to rename the bill "Local Law Enforcement Thought Crimes Prevention Act of 2009." Defeated 15 to 10.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez		X	
Ms. Wasserman Schultz			
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper	X		
Total	10	15	

8. Motion to table an appeal of the Chair's ruling that the Jordan amendment to broaden the protected classes in the bill to include an unborn child was non-germane. Agreed to 14 to 10.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Gutierrez			
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Gonzalez			
Mr. Weiner	X		
Mr. Schiff			
Ms. Sánchez	X		
Ms. Wasserman Schultz			
Mr. Maffei	X		
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren			
Mr. Issa		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Franks			
Mr. Gohmert		X	
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz		X	
Mr. Rooney			
Mr. Harper		X	
Total	14	10	

9. An amendment by Mr. Goodlatte to broaden protected classes in the bill to cover crimes where the victim's status was that of a pregnant woman. Defeated 13 to 9.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez		X	

ROLLCALL NO. 9—Continued

	Ayes	Nays	Present
Ms. Wasserman Schultz			
Mr. Maffei			
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney			
Mr. Harper	X		
Total	9	13	

10. An amendment by Mr. King to replace the term "gender" with the term "sex" throughout the bill and strike the term "gender identity." Defeated 16 to 10.

ROLLCALL NO. 10

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez		X	
Ms. Wasserman Schultz			
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			

ROLLCALL NO. 10—Continued

	Ayes	Nays	Present
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney			
Mr. Harper	X		
Total	10	16	

11. An amendment by Mr. King to broaden the protected classes in the bill to include anyone possessing any immutable characteristic. Defeated 10 to 9.

ROLLCALL NO. 11

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen			
Mr. Johnson			
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Gonzalez		X	
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez			
Ms. Wasserman Schultz		X	
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes			
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Mr. Poe			
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	9	10	

12. An amendment by Mr. King to create a new category of criminal offense for crimes committed by illegal immigrants against

nationals of the United States because of the U.S. national's status as a U.S. national or U.S. citizen. Defeated 14 to 11.

ROLLCALL NO. 12

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson			
Mr. Pierluisi		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin		X	
Mr. Gonzalez		X	
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez		X	
Ms. Wasserman Schultz		X	
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan			
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	11	14	

13. An amendment by Mr. King to replace the term "gender" with the term "sex" throughout the bill. Defeated 16 to 11.

ROLLCALL NO. 13

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Delahunt		X	
Mr. Wexler		X	

ROLLCALL NO. 13—Continued

	Ayes	Nays	Present
Mr. Cohen		X	
Mr. Johnson			
Mr. Pierluisi		X	
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Gonzalez		X	
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez		X	
Ms. Wasserman Schultz		X	
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan			
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper	X		
Total	11	16	

14. An amendment by Mr. King to add an additional element of proof to the substantive offense, requiring proof of intent to intimidate or terrorize the class of persons to which the victim belongs. Defeated 10 to 8.

ROLLCALL NO. 14

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen			
Mr. Johnson			
Mr. Pierluisi		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei		X	

ROLLCALL NO. 14—Continued

	Ayes	Nays	Present
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney			
Mr. Harper			
Total	8	10	

15. An amendment by Mr. King to define the term "sexual orientation" as used in the bill to explicitly exclude pedophilia. Defeated 13 to 10.

ROLLCALL NO. 15

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		

ROLLCALL NO. 15—Continued

	Ayes	Nays	Present
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney			
Mr. Harper			
Total	10	13	

16. An amendment by Mr. Goodlatte to strike the text setting forth the basis of bias against the protected classes as an element of the offense, thereby broadening the scope of the bill to include all violent crimes against persons. Defeated 14 to 11.

ROLLCALL NO. 16

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Gonzalez			
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei		X	
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney	X		
Mr. Harper			
Total	11	14	

17. Motion to report H.R. 1913 favorably, as amended. Passed 15 to 12.

ROLLCALL NO. 17

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Gonzalez	X		
Mr. Weiner	X		
Mr. Schiff			
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
[Vacant]			
Mr. Smith, Ranking Member			
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren			
Mr. Issa			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Mr. Poe		X	
Mr. Chaffetz			
Mr. Rooney		X	
Mr. Harper		X	
Total	15	12	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Pursuant to Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee advises that there is authorized to be appropriated $5,000,000 for each of fiscal years 2010 and 2011.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1913, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 27, 2009.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1913, the "Local Law Enforcement Hate Crimes Prevention Act of 2009."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1913—the Local Law Enforcement Hate Crimes Prevention Act of 2009.

SUMMARY

H.R. 1913 would establish certain hate crimes as new federal offenses and would authorize the appropriation of:

- $5 million for each of fiscal years 2009 and 2010 for DOJ to make grants to state, local, and tribal governments to investigate and prosecute hate crimes;
- Such sums as may be necessary for DOJ to make grants to state, local, and tribal governments to address hate crimes committed by juveniles; and
- Such sums as may be necessary for fiscal years 2009 through 2011 for DOJ and the Department of the Treasury to investigate and prosecute hate crimes.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1913 would cost about $10 million over the 2010–2014 period. The legislation could affect direct spending and revenues, but CBO estimates that any such effects would not be significant in any year.

H.R. 1913 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1913 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	10	*	0	0	0	10
Estimated Outlays	2	3	2	2	1	10

Note: * = less than $500,000.

CBO assumes that the bill will be enacted near the start of fiscal year 2010. Based on spending for similar activities in recent years, CBO estimates that the bill's authorization for grants to address hate crimes committed by juveniles would cost an additional $5 million in fiscal year 2010—the same amount that the bill would specifically authorize for grants to state and local governments to combat hate crimes in general. We assume that the necessary amounts (a total of $10 million for 2010) will be appropriated by the start of that fiscal year and that spending will follow the historical rates for similar grant programs.

Based on trends in federal investigations and prosecutions in recent years, CBO expects that the new hate crimes established by the bill would apply to a small number of cases each year. Thus, any increase in costs to DOJ, the Department of the Treasury, and the federal judiciary for law enforcement, court proceedings, or prison operations would be less than $500,000 annually for 2010 through 2011, subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1913 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Collections of such fines are recorded in the budget as revenues, which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would be negligible because of the small number of cases involved.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1913 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Assuming the appropriation of authorized and estimated amounts, those governments would receive $10 million to investigate and prosecute hate crimes. The bill also would authorized the Attorney General to provide technical, forensic, and prosecutorial assistance to those governments. Any costs to nonfederal entities would be incurred voluntarily as a condition of receiving federal assistance.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1913 will assist State and local law enforcement in the investigation and prosecution of hate crimes and will permit Federal prosecution of hate crimes in appropriate instances.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 3 of the Constitution, and in the Thirteenth and Fourteenth Amendments to the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1913 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. This section names the short title of the bill as the "Local Law Enforcement Hate Crimes Prevention Act of 2009."

Sec. 2. Definition of a Hate Crime. This section defines a "hate crime" as a violent act causing death or bodily injury "because of the actual or perceived race, color, religion, national origin, sexual orientation, gender, gender identity or disability" of the victim.

Sec. 3. Support for Criminal Investigations and Prosecutions by State, Local and Tribal Law Enforcement Officials. This subsection (a) allows the Department of Justice to render technical, forensic, or any other form of assistance to State and law enforcement agencies to aid in the investigation of and prosecution of crimes motivated by prejudice based upon the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability of the victim or is a violation of local law. Priority is given to crimes by offenders who acted in more than one State and rural jurisdiction with extraordinary expenses.

Subsection (b) creates a grant program under the authority of the Department of Justice that is design to assist State and local law enforcement agencies in funding the extraordinary expenses associated with the investigation and prosecution of hate crimes. A grant under this provision shall not exceed $100,000 for any single jurisdiction in any 1-year period. Appropriations are authorized at a level of $5,000,000 for each of fiscal years 2010 and 2011.

Sec. 4. Grant Program. This section creates a grant program under the authority of the Department of Justice that is design to combat hate crimes committed by juveniles, including programs to train law enforcement in identifying, investigating, prosecuting and preventing bias crimes.

Sec. 5. Authorization for Additional Personnel to Assist State, Local and Tribal Law Enforcement. This section authorizes appropriations of sums necessary, if any, to support the response, investigation and prosecution of alleged violations of provisions created pursuant to this legislation.

Sec. 6. Prohibition of Certain Hate Crime Acts. This section adds a new provision to title 18 of the U.S. Code to be codified at 18 U.S.C. 249—entitled "Hate crime acts." In particular, section 249(a)(1) prohibits the intentional infliction of bodily injury on the basis of race, color, religion, or national origin. Unlike, current law, codified at 18 U.S.C. 245(b)(2), this new provision does not require a showing that the defendant committed the offense because of the victim's participation in a federally protected activity. An offense under the new 18 U.S.C. 249(a)(1) will be prosecuted as a felony only, and a showing either of bodily injury or death or of an attempt to cause bodily injury or death through the use of fire, a firearm, or an explosive device is required. Other misdemeanor attempts will not constitute offenses under this section.

The new section 18 U.S.C. 249(a)(2), prohibits the intentional infliction of bodily injury or death (or an attempt to inflict bodily injury or death through the use of fire, a firearm, or an explosive device) on the basis of religion, gender, sexual orientation, gender identity or disability. This provision omits the "federally protected activity" requirement of 18 U.S.C. 245, but instead requires proof of a commerce clause nexus as an element of the offense.

Subsection(b) of this provision requires a written certification from the Attorney General before prosecutions can be brought under sections 249 (a)(1) and (a)(2).

Subsection(d) of this provision establishes that an expression or association of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offence. This subsection is not intended to amend the Federal rules of evidence, but is intended to ensure that the expressions of, for example, religious beliefs or unpopular beliefs, or associations with those that express such beliefs, in the absence of other evidence of culpability in the charged offense, do not form the basis of a prosecution or unfairly prejudice an accused at trial, and that such expressions or associations may only be admitted at trial where they can be shown, either by the content of the statements, the nature of the association, or by other independent evidence, to specifically relate to the charged offense. Such evidence may be introduced as impeachment or rebuttal.

Sec. 7. Severability. This section shields underlying hate crime statutes and amendments from any finding of unconstitutionality directed against a specific section or amendment of hate crimes law.

Sec. 8. Rule of Construction. This section provides that nothing in the bill shall be construed to prohibit expressive conduct or activities protected by the Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics

and existing law in which no change is proposed is shown in roman):

CHAPTER 13 OF TITLE 18, UNITED STATES CODE

CHAPTER 13—CIVIL RIGHTS

§ 249. Hate crime acts

(a) IN GENERAL.—

(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(i) death results from the offense; or

(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—

(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person—

(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(I) death results from the offense; or

(II) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)—

(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(II) otherwise affects interstate or foreign commerce.

(b) CERTIFICATION REQUIREMENT.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that—

(1) such certifying individual has reasonable cause to believe that the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of any person was a motivating factor underlying the alleged conduct of the defendant; and

(2) such certifying individual has consulted with State or local law enforcement officials regarding the prosecution and determined that—

(A) the State does not have jurisdiction or does not intend to exercise jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the State does not object to the Federal Government assuming jurisdiction; or

(D) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

(c) DEFINITIONS.—

(1) In this section—

(A) the term "explosive or incendiary device" has the meaning given such term in section 232 of this title; and

(B) the term "firearm" has the meaning given such term in section 921(a) of this title.

(2) For the purposes of this chapter, the term "gender identity" means actual or perceived gender-related characteristics.

(d) RULE OF EVIDENCE.—In a prosecution for an offense under this section, evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense. However, nothing in this

section affects the rules of evidence governing impeachment of a witness.

DISSENTING VIEWS

We oppose H.R. 1913 as an unconstitutional threat to religious freedom, freedom of speech, equal justice under the law and basic federalism principles.

Justice should be blind to the personal traits of victims. Under the Majority's hate crime bill, H.R. 1913, criminals who kill a homosexual, transvestite or transsexual will be punished more harshly than criminals who kill a police officer, a member of the military, a child, a senior citizen, or any other person. Hate crimes legislation hands out punishment according to the victim's race, gender, sexual orientation, disability or other protected status.

We all deplore bias-related violent crimes. Every violent crime is a tragedy and we must do everything we can to ensure public safety in our communities. Violent crimes committed in the name of hatred of a group can be devastating to a victim and a community. These crimes must be vigorously prosecuted at the state and local level.

Our criminal justice system has been built on the ideal of "equal justice for all." If enacted this bill will turn that fundamental principle on its head—justice will depend on whether or not the victim is a member of a protected category: a vicious assault of a homosexual victim will be punished more than the vicious assault of a heterosexual victim. A senseless act of violence, committed with brutal hatred and viciousness, will be treated as less important than one where a criminal is motivated by hatred of specific categories of people. Justice will no longer be equal but now will turn on the race, gender, sexual orientation, disability or other protected status of the victim. All victims should have equal worth in the eyes of the law, regardless of race or status.

By opening the door to criminal investigations of an offender's thoughts and beliefs about his or her victims, this bill will raise more controversy surrounding a crime. Groups now will seek heightened protections for members of their respective groups, and require even more law enforcement resources to investigate a suspect's mindset.

Even more dangerous, although perhaps unintended, the bill raises the possibility that religious leaders or members of religious groups could be prosecuted criminally based on their speech or protected activities. A chilling effect on religious leaders and others who express their beliefs will unfortunately result.

The bill itself is unconstitutional and will be struck down by the courts. No matter how vehemently proponents of the bill try to defend a Federal nexus—there is simply no impact of such crimes on interstate or foreign commerce. The record evidence in support of such a claim is transparent and will be quickly brushed aside by any reviewing court.

The Supreme Court, in *United States v. Morrison,* 529 U.S. 598 (2000), struck down a prohibition on gender-motivated violence, and specifically warned Congress that the commerce clause does not extend to "non-economic, violent criminal conduct" that does not cross state lines. Nor is the proposed legislation authorized under the 13th, 14th, or 15th amendments.

Aside from the constitutional infirmities that riddle this bill, the sponsors are seeking to address a problem that is not overwhelming our state or local governments. FBI statistics show that the incidence of hate crimes has actually declined over the last ten years. Of the reported hate crimes in 2007, 9 were murders and 2 were rapes. Only 9 of approximately 17,000 homicides in the Nation involved so called hate crimes. A majority of the crimes reported by the FBI involved "intimidation" with no bodily injury—words or verbal threats against a person. There is zero evidence that states are not fully prosecuting violent crimes involving hate. Violent crimes are vigorously prosecuted by the states. In fact, 45 states and the District of Columbia already have specific laws punishing hate crimes, and Federal law already punishes violence motivated by race or religion in many contexts.

At the markup, we sought to address these infirmities with the bill—to restore equal justice under law, to protect the freedom of expression and religious freedom that is so important to our Nation, and to ensure that the enumerated powers of the Federal Government are not inappropriately expanded. We offered 18 amendments to this legislation but the Majority defeated each and every one of our attempts to address these problems.

H.R. 1913 RAISES FIRST AMENDMENT CONCERNS AND OPENS THE DOOR TO THE PROSECUTION AND INVESTIGATION OF SPEECH AND RELIGIOUS ACTIVITIES AND GROUPS

The first amendment to the Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." America was founded upon the notion that the government should not interfere with the religious practices of its citizens. Constitutional protection for the free exercise of religion is at the core of the American experiment in democracy.

Hate crimes legislation that selectively criminalizes bias-motivated speech or symbolic speech is not likely to survive constitutional review; however, hate crimes statutes that criminalize bias motivated violence may survive a first amendment challenge. *Cf. R.A.V. v. City of St. Paul,* 505 U.S. 377 (1992) (striking down ordinance that selectively prohibited types of hateful speech); and *Wisconsin v. Mitchell,* 508 U.S. 476 (1993) (upholding a state hate crime penalty enhancement for a violent crime and finding that restriction on speech was justified when linked to violent act).

However, hate crimes legislation can have a chilling effect on speech and first amendments rights by injecting criminal investigations and prosecutions into areas traditionally reserved for protected activity. The line between bias-motivated speech and bias-motivated violence is not so easy to draw.

For example, in prosecuting an individual for a hate crime, it may be necessary to seek testimony relating to the offender's thought process to establish his motivation to attack a person out of hatred of a particular group. Members of an organization or a religious group may be called as witnesses to provide testimony as to ideas that may have influenced the defendant's thoughts or motivation for his crimes, thereby expanding the focus of an investigation to include ideas that may have influenced a person to commit an act of violence. Such groups or religious organizations may be

chilled from expressing their ideas out of fear from involvement in the criminal process.

Moreover, under existing criminal law principles, the bill raises the possibility that religious leaders or members of religious groups could be prosecuted criminally based on their speech or protected activities. Using conspiracy law or section 2 of title 18 which allows for the prosecution of anyone who aids, abets, counsels, commands, induces or procures the commission of a crime, or anyone who "willfully causes an act to be done" by another, it is easy to imagine a situation in which a prosecutor may seek to link hateful speech by one person to causing hateful violent acts by another.

Ultimately, a pastor's sermon concerning religious beliefs and teachings could be considered to cause violence and will be punished or at least investigated. Once the legal framework is in place, political pressure will be placed on prosecutors to investigate pastors or other religious leaders who quote the Bible or express their long-held beliefs on the morality and appropriateness of certain behaviors. Religious teachings and common beliefs will fall under government scrutiny, chilling every American's right to worship in the manner they choose and to express their religious beliefs.

Hate crimes laws could be used to target social conservatives and traditional morality. Hate crimes laws have already been used to suppress speech disfavored by cultural elites—indeed this may be their principal effect. Of the 4300 hate crimes against persons reported by the FBI in 2007, over 2,000 incidents involved "intimidation," usually defined as threatening words. The "intimidation" category does not even exist for ordinary crimes. This vague concept is already being abused by some local governments, which target speech in favor of traditional morality as hate speech. In New York, a pastor who had rented billboards and posted biblical quotations on sexual morality had them taken down by city officials, who cited hate-crimes principles as justification. In San Francisco, the city council enacted a resolution urging local broadcast media not to run advertisements by a pro-family group, and recently passed a resolution condemning the Catholic Church because of its "hateful" views. No viewpoint should be suppressed simply because someone disagrees with it.

H.R. 1913 IS INCONSISTENT WITH FEDERALISM PRINCIPLES

The bill raises significant federalism concerns, and provides protected status to victims based on religion, national origin, gender, sexual orientation, gender identity or disability.

All violent crimes can be "hate" crimes, and there is little justification for singling out specific groups of victims for Federal protection. A Federal law criminalizing violent actions based upon a victim's real or perceived characteristics would be such an act.

Such a law criminalizes acts that have long been regulated primarily by the states. Under the Federal system, the Supreme Court has observed, "States possess primary authority for defining and enforcing the criminal law." *Brecht v. Abrahamson,* 507 U.S. 619, 135 (1993) (*quoting Engle v. Isaac,* 456 U.S. 107, 128 (1982)). "Our national government is one of delegated powers alone. Under our Federal system the administration of criminal justice rests with the states except as Congress, acting within the scope of those

delegated powers, has created offenses against the United States." *Screws v. United States,* 325 U.S. 91, 109 (1945) (plurality opinion).

The Court has viewed the expansion of Federal criminal laws with great concern due to their alteration of the balance of Federal-State powers. "When Congress criminalizes conduct already denounced as criminal by the States, it effects a change in the sensitive relation between federal and state criminal jurisdiction." *United States v. Lopez,* 514 U.S. 549, 561 n. 3 (1995) (*quoting United States v. Emmons,* 410 U.S. 396, 411–12 (1973)).

Congress should not act quickly or without due deliberation before it chooses to further federalize yet another area that generally lies within the competence of the states. Given the principles of federalism that govern the Constitution, Congress should not use its powers until it is confident that hate crimes are a problem that is truly national in scope.

H.R. 1913 VIOLATES THE INTERSTATE COMMERCE CLAUSE AND HAS NO SUPPORT UNDER THE THIRTEENTH, FOURTEENTH, AND FIFTEENTH AMENDMENTS

In addition to federalism concerns, the legislation creates Federal jurisdiction on tenuous constitutional grounds, relying on the Commerce Clause, and the 13th, 14th, and 15th amendments.

Interstate Commerce Clause

The Supreme Court, in *United States v. Morrison,* 529 U.S. 598 (2000), struck down a prohibition on gender-motivated violence, and specifically ruled that Congress has no power under the Commerce Clause or the 14th amendment over "non-economic, violent criminal conduct" that does not cross state lines. The Court concluded that upholding the criminal provision of the Violence Against Women Act would open the door to a federalization of virtually all serious crimes as well as family law and other areas of traditional state regulation. *Id.* at 615–16.

The Supreme Court's *Morrison* decision followed several other decisions in which the Court clarified the Constitution's restrictions on Congress's exercise of its powers under both the Interstate Commerce Clause and section five of the 14th amendment. *See United States v. Lopez,* 514 U.S. 549 (1995); *see also Florida Prepaid Postsecondary Educ. Expense Board v. College Savings Bank,* 527 U.S. 627 (1999); *City of Boerne v. Flores,* 521 U.S. 507 (1997).

Federal efforts to criminalize hate crimes cannot survive the federalism standards articulated by the Supreme Court. Not only does much of the hate crime problem go beyond what Congress may regulate under the Interstate Commerce Clause, but Congress has yet to perform the extensive fact-finding required to demonstrate that hate crimes are a national problem that requires a Federal solution.

In cases in which Congress uses its enforcement powers under section five of the 14th amendment, the Court has said, it must identify conduct that violates 14th amendment rights, and its must tailor the legislative scheme to remedying or preventing such conduct. To meet these requirements, Congress must conduct fact-finding to demonstrate the concerns that led to the law.

In *City of Boerne v. Flores,* the Court found that Congress had "little evidence of infringing conduct on the part of the States" in

the use of facially-neutral laws to infringe religious liberties. *City of Boerne,* 521 U.S. at 530–32. In *Florida Prepaid,* the Court noted that "[i]n enacting the Patent Remedy Act. . . . Congress identified no pattern of patent infringement by the States, let alone a pattern of constitutional violations." The Court held that Congress had found few instances in which states had violated Federal patent laws, and so invalidated the Patent Remedy Act's abrogation of state sovereign immunity. *Florida Prepaid,* 527 U.S. at 645–46.

In order to create a case for the constitutionality of a law criminalizing hate crimes, Congress must engage in fact-finding. Unfortunately, in their haste to rush this bill through the Committee, the majority has not done any fact finding whatsoever. To meet this standard, the Majority failed to hold adequate hearings concerning the scope of hate crimes in this country, their numbers, and their impact on the economy.

The only iota of fact-finding to be found in relation to H.R. 1913 is section two of the bill, which lays out various "findings" regarding so-called hate crimes. Ironically, and inexplicably, the Majority chose to remove this section from the bill through adoption of a manager's amendment offered by Mr. Scott.

Until Congress engages in this sort of legislative spadework, it will not be able to justify any factual basis for its action.

Fourteenth and Fifteenth Amendments

The 14th and 15th amendments do not provide Congress with the claimed authority. The 15th amendment forbids the Federal Government or a state from denying or abridging the right to vote on the basis of an individual's race, color or previous condition of servitude. The 14th amendment prohibits the states from denying equal protection of the law, due process or the privileges and immunities of U.S. citizenship. Both of these amendments extend only to state action and do not encompass the actions of private persons. Hate crimes by private persons are outside the scope of these amendments.

Thirteenth Amendment

Section two of the 13th amendment stands on different footing. The Amendment proscribes slavery and involuntary servitude without reference to Federal, state or private action. In order to reach private conduct, i.e. individual criminal conduct, Congress would have to find that hate crimes against certain groups constitute a "badge and incident" of slavery. See *Griffin v. Breckenridge,* 403 U.S. 88, 105 (1971).

The Court has addressed Congress's power under section two in only a few cases, the chief of which is *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409 (1968). In that case, the Court upheld 42 U.S.C. § 1982—passed originally as part of the Civil Rights Act of 1866—which was read to bar discrimination against African-Americans in the sale or rental of property.

Unlike the 14th amendment, the Court emphasized, the 13th amendment allows Congress to enact laws that operate upon the acts of individuals, regardless of whether they are sanctioned by state law. Section two of the amendment "clothed Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States." *Jones,* 392

U.S. at 439. Therefore, the Court observed, "[s]urely Congress has the power under the 13th amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation." *Id.* at 440. The Court, however, has not provided much guidance beyond Jones on what constitutes "the badges and the incidents of slavery." *See, e.g., Carpenters, Local 610 v. Scott,* 463 U.S. 825 (1983); *Griffin v. Breckenridge,* 403 U.S. 88 (1971).

Congress should tread carefully before it chooses to pass a hate crimes statute on the basis of section two of the 13th amendment. Such a law would have to be utterly clear that it is based on the grant of authority to combat slavery. Only vaguely asserting that some hate crimes might be linked to vestiges, badges, or incidents of slavery or segregation would not be enough.

Although there have been few judicial pronouncements on the scope of the 13th amendment, the *Jones* case was limited to discrimination on the basis of race, specifically discrimination against African-Americans. Efforts to include within a hate crimes prohibition those crimes motivated by national origin, religion, gender, sexual orientation, disability and any other factor other than race would amount to a congressional effort to interpret the 13th amendment beyond that so far permitted by the Supreme Court. The Court will want to ensure that, in defining badges and incidents of slavery to include hate crimes, Congress has enacted remedial and preventative legislation that seeks to end the true effects of slavery, rather than attempting to re-define the term "slavery" or "involuntary servitude" as it has been interpreted by the Supreme Court.

STATISTICS SHOW THAT HATE CRIMES HAVE DECLINED OVER THE LAST TEN YEARS

FBI statistics show that the incidence of hate crimes has declined over the last ten years. In 1997, a total of 8,049 bias-motivated criminal incidents were reported by the FBI. Statistics for four of those years, 2002 through 2005, demonstrated a steep decline in the number of hate crimes reported. In 2005, for example, 7,163 hate crimes were reported. In the last two years for which data is available, there has been a slight uptick in the number of hate crimes—7,722 incidents in 2006 and 7,624 in 2007—but fewer hate crimes are committed today than ten years ago.

In 2007, 51 percent of the crimes involved racial bias; 18 percent involved anti-religion bias; 17 percent involved sexual orientation bias; and 13 percent involved national origin bias. Anti-disability bias was about 1 percent. Further, in 2007, there were 1,083 violent crimes against persons—rape, murder, assault, intimidation, and robbery—that were based on bias against sexual orientation, or approximately 3.6 incidents per 100,000 inhabitants. In contrast, there were a total of 1,408,337 violent crimes committed in 2007, or about 466.9 violent crimes incidents per 100,000 inhabitants.[1]

[1] The 1990 Hate Crime Statistics Act charged the U.S. Attorney General to "acquire data . . . about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including, where appropriate, the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property." The Hate Crimes Statistics Act does not require collection of hate crimes statistics for violent crimes alleged to be motivated by "gender identity." A 1994 amendment

Continued

According to FBI data, there were 16,929 murders in the U.S. in 2007. Of that number, nine murders were classified as "hate crimes". By doing the math, we learn that "hate-crimes" murders make up less than one-tenth of 1% of the murders committed in the U.S. in 2007. This begs the question of why the House would pass legislation that ignores 99.9% of the murders in this country.

STATE PROSECUTIONS ALREADY ADDRESS VIOLENT CRIMES AND HATE CRIMES

Hate-crimes laws are unnecessary: the underlying offense is already fully and aggressively prosecuted in almost all states. There is zero evidence that states are not fully prosecuting violent crimes involving "hate."

Moreover, 45 states and the District of Columbia already have laws punishing hate crimes, and Federal law already punishes violence motivated by race or religion in many contexts. In the absence of data that states are unable to prosecute or decline to prosecute hate crimes, there is no reason for the Federal assertion of jurisdiction or the diversion of Federal resources to such investigations and prosecutions.

Some of the most notorious hate crimes were prosecuted under state laws, and there is no evidence that states are unable or unwilling to prosecute such crimes. Of the 5 states with no current hate crime legislation (Georgia, Indiana, Arkansas, South Carolina, and Wyoming), Georgia and Indiana have passed legislation pertaining to hate crimes in recent years, and in both states the legislation has been struck down by the courts.

NEED TO PROTECT MILITARY, UNBORN CHILDREN, THE ELDERLY, AND MOTHERS

In protecting limited categories of groups, such as race, religion, sexual orientation, gender or gender identity, the Majority rejected our attempts to add other equally meritorious groups such as current and former members of the Armed Forces, senior citizens, and pregnant women. We can see no reason to distinguish among these groups—all of them deserve heightened protection against hate-motivated crimes. Despite the evidence of crimes targeting these members of these groups, the Majority has made its priorities clear, and has done a disservice to our Armed Forces, senior citizens, and pregnant women.

Members of the Armed Forces

We honor our men and women of the military because of their patriotism, their commitment to protecting our freedom and to serving our country. In times of controversy surrounding the use of our military, we have seen unfortunate acts by those who use their hostility towards the military to further their political agenda.

For example, recently we were faced with the practice of groups protesting at military funerals of soldiers killed in Iraq. This sick and despicable behavior intruded on the family of the lost soldier and the need for privacy and respect. Congress acted in 2006 in

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added the disabled to the list of groups to be tracked. The Attorney General delegated data collection of hate crimes principally to the FBI. The FBI appended information on bias motivation to the Uniform Crime Report (UCR).

passing legislation to restrict the right of protesters to interfere with military funerals.

With the rising debate over the Iraq War, we are seeing increased threats to Iraq War veterans. In 2004, Private First Class Foster Barton, of Grove City, Ohio, was brutally beaten in the parking lot of a music venue in Columbus as he was leaving a concert. According to the Columbus police, six witnesses who didn't know Barton said the person who beat him up was screaming profanities and making crude remarks about U.S. soldiers. Barton had been on a 2-week leave from service in Iraq when the incident happened. A year later, during a peace rally, a war veteran was spit on by a protester at the rally. Such incidents were all too common place during the upheaval surrounding the Vietnam War, when hundreds of threats and spitting incidents occurred against Vietnam War veterans.

We need to make it clear to everyone that we honor members of our Armed Forces. Any act of violence against a member of the Armed Forces must be met with swift and sure punishment. Crimes against our Armed Forces must be punished at a heightened level just like the other groups that are given protection under this Act.

During consideration of H.R. 1913, Mr. Rooney offered an amendment to add current and former members of the Armed Services to the list of classes protected under this legislation. The Majority rejected this amendment and defeated it in a party-line vote.

Unborn Children

Partial birth abortion is a barbaric procedure that cannot be tolerated in a civilized society. During this procedure, a partially-born, living infant is literally ripped from his mother's womb and stabbed in the back of the head. As Senator Moynihan stated so poignantly, "this is just too close to infanticide. A child has been born and it has exited the uterus and, what on Earth is this procedure?"

On April 18, 2007, the Supreme Court, in *Gonzales v. Carhart,* 127 S.Ct. 1610 (2007), ruled constitutional the Federal law banning partial birth abortions, finding that the ban on partial birth abortions does not place an undue burden on a woman's right to an abortion because there are alternative conventional abortion procedures that can be used if necessary. *Id.* at 1632.

During consideration of H.R. 1913, Mr. Jordan of Ohio offered an amendment to include unborn children killed by a partial birth abortion as a class of protected persons under the hate crimes statute. Unfortunately, the chair ruled the amendment non-germane based on the erroneous rationalization that unborn children are not "persons" for the purposes of the hate crimes law.

Pregnant Women

All acts of violence against women are abhorrent, but they are especially disturbing when committed against pregnant women. When a violent crime causes injury to a pregnant woman that results in a miscarriage or other damage to the fetus, we all share

the desire to ensure that our criminal justice system responds decisively and firmly to exact appropriate punishment.[2]

On December 16, 2004, Bobbi Jo Stinnett, in Skidmore, Missouri, was 23 years old when she was strangled to death and her unborn child was killed. The killer, Lisa Montgomery, who was 36 years old, had met Stinnett in an online chat room and met with her at her home under the pretext of buying a dog. Montgomery specifically targeted Stinnett because she was pregnant. Montgomery had lost a child she was carrying prior to murdering Stinnett.

A 2002 GAO report cited estimates from 15 states that between 2.2 percent to 6.4 percent of pregnant women had been violently attacked. This is intolerable and we should do more to protect pregnant women from attack.

During consideration of H.R. 1913, Mr. Goodlatte offered an amendment to add pregnant women to the list of classes protected by this legislation. The Majority rejected this amendment and defeated it in a party-line vote.

Senior Citizens

Our senior citizens are vulnerable, like our children, to violent abuse. Recent events have underscored the harm to our senior citizens from violent crime, and the need to make sure that hate crimes against our senior citizens do not occur.

On March 4, 2007, a New York City man was videotaped by a surveillance camera mugging a 101-year-old woman in the lobby of her apartment building. The heartlessness and hatred of this attack is clearly conveyed on the videotape when Rose Morat was trying to leave her building to go to church. The robber acted like he was going to help her through the vestibule and then turned and delivered three hard punches to her face and grabbed her purse. He pushed her and her walker to the ground. Rose Morat suffered a broken cheekbone and was hospitalized. Police believe the same suspect robbed an 85-year-old woman shortly after fleeing from Rose Morat's apartment house.

During consideration of H.R. 1913, Mr. Goodlatte offered an amendment to add senior citizens to the list of classes protected by this legislation. The Majority rejected this amendment and defeated it in a party-line vote.

CONCLUSION

As outlined above, H.R. 1913 suffers from numerous problems. The Majority's rush to judgment ensures that, even if enacted, the hate crimes statute will most likely be overturned by the courts, and therefore, will be counter-productive to its stated goal of assisting state and local law enforcement to reduce bias-motivated violence.

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[2] In 2004, Congress passed the Unborn Victims of Violence Act, 18 U.S.C.A. §1841, and created a separate criminal offense for the killing of an unborn child during the commission of a violent crime against a pregnant woman.

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JIM JORDAN.
TED POE.
JASON CHAFFETZ.
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