

The Danger of Hate Crimes Legislation

A number of countries, including the U.S. (both at the federal and state level), have enacted hate crimes legislation that increases sentences for perpetrators who have been found guilty of crimes motivated by hatred against a minority deemed to be vulnerable. Such legislation typically covers at least race and religion as protected classes.

Of course, violence against any individual should not be tolerated. Rational people do not disagree on that point. But existing criminal laws intended to curtail violence already take into account the intent of the attacker in determining the appropriate level of punishment.

Hate crimes legislation provides “special protection” for certain classes of individuals, rather than equal protection for everyone. Increased punishments are given to the perpetrators based on what is perceived to be their hateful thoughts and beliefs towards the victim, something very difficult to measure.

In recent years there has been a push to add “sexual orientation” and “gender identity and expression” as protected classes under hate crimes legislation. These classes are radically different than those based on an inherent characteristic like race. Why should a person receive more protection because of their sexual expression or behavior? Why should heterosexuals receive less protection than homosexuals? Why should a person who attacks a homosexual receive a harsher punishment than a person who attacks, for example, an old lady? It just doesn’t make sense.

Hate crimes legislation is just a small step away from criminalizing speech (without any conduct) that criticizes sexual behavior. There is growing concern that those seeking to add “sexual orientation” or “gender identity and expression” as protected classes under hate crimes legislation are trying to broaden the measures to use them against those who criticize or express a religious belief against the homosexual lifestyle.

Hate Crimes Legislation Around the World

In Sweden “unfavorable speech” about a person’s sexual orientation is itself criminalized. As a result of a 2002 amendment to Sweden’s constitution, the mere public expression of beliefs about homosexuality without any accompanying criminal conduct can be criminally actionable there. Their law offers no exclusions for religiously motivated “hate speech,” and specifically criminalizes “hate speech” in “church sermons.” The Swedish Federation for Gay, Lesbian, Bisexual, and Transgender Rights (RFSL) had asked that religiously-motivated speech not be exempt from the legislation.

A Pentecostal pastor in Sweden, Ake Green, was convicted of hate speech against homosexuals during a sermon in his church which focused on biblical teachings that condemn homosexual behavior. He was sentenced to 30 days in jail. The case went to Sweden's Supreme Court, with the prosecutor asking that the pastor be given a sentence of six months. Fortunately, the Swedish high court cleared Pastor Green of the hate crime charge. But the decision's reasoning is not very clear and their law still penalizes speech against homosexuality.¹

Then there is Hugh Owens who was found guilty of a hate crime in Canada under Saskatchewan's Human Rights Code. Owens had placed an ad in the newspaper in response to Homosexual Pride Week that listed four Bible references opposing homosexuality. The ad included a drawing of two stick figures holding hands within a circle with a diagonal bar placed over it. The message was clear: The Bible teaches that homosexual behavior is wrong.

Even though Owens engaged in no criminal conduct, only the speech in the ad, the Canadian Human Rights Board ruled that both Owens and the newspaper "discriminated against three gay men because of their sexual orientation by exposing them to hatred and ridicule and affronted their dignity."² Owens and the owners of the newspaper were ordered to pay damages of \$1,500 to each of the three homosexual men who filed the complaint.

Even though that decision was reversed on appeal, the door clearly has been opened to characterize preaching against homosexual acts as a hate crime in Canada. Indeed, other provincial human rights commissions in Canada have tried to penalize and prohibit expression opposing homosexuality and only backed down due to public opposition.³ In Canada, being accused of a hate crime is punishment in and of itself whether you are found guilty or not. Defendants are stuck with large legal bills, while those who make the claims against them are not responsible for funding the prosecution which is covered by the human rights tribunal. Even if defendants eventually win their case, they lose financially and sometimes suffer reputation and employment repercussions.

U.S. law has always provided strong protection for free speech and freedom of religion. Nevertheless, Americans must be vigilant in protecting their right to speak out on moral issues.

In 2004, eleven Philadelphia Christians (known as the "Philadelphia 11") were arrested and jailed for peacefully passing out Christian literature at a gay pride event. Ironically,

¹ A summary of the issue is available at, http://www.religioustolerance.org/hom_hat8.htm;
<http://leozak.blogspot.com/2005/12/ake-green-acquitted-of-hate-speech-by.html>;
<http://www.cwfa.org/articledisplay.asp?id=9549&department=CFI&categoryid=freedom>

² Saskatchewan Human Rights Commission 2001-2002 Annual Report, p. 22.

³ See <http://www.chalcedon.edu/articles/article.php?ArticleID=2886> (retrieved on October 21, 2008).

prior to their arrest, the Christians were confronted by a militant mob of homosexuals known as the “Pink Angels” who blew loud whistles and carried large pink signs in front of them to block their message and access to the event, while others screamed obscenities. The Philadelphia police refused to take any action as the Christians were continuously followed, obstructed, and harassed and the police arrested and jailed the Christians instead.

After spending 21 hours in jail, the Philadelphia District Attorney’s office charged them under (1) Pennsylvania’s hate crimes law called “Ethnic Intimidation,” to which “sexual orientation” was added as a victim category; and (2) a host of other felony and misdemeanor charges. Had they been convicted, each of the Philadelphia 11 could have faced up to 47 years in prison and \$90,000 in fines. These charges were later dismissed by Philadelphia County Court of Common Pleas as being without merit.

The Philadelphia 11 then filed a lawsuit against the City of Philadelphia for violations of their civil rights. However their lawsuit was dismissed by the court which determined that the police were justified in their arrests based on their perception that the Philadelphia 11 were “disrupting the event” even though the Christians were not charged for being “disruptive,” and it was the homosexuals at the event that caused the commotion. Michael Marcavage, one of the Philadelphia 11, noted that “The result in this case is another dangerous example of how hostility toward Biblical Christianity is growing in our nation, and ultimately how homosexual extremism will not only silence those who share their faith publicly, but the pulpit itself.”⁴

In Holland, criticism of “fornicators” and “adulterers” is considered a hate crime; and in France, legislators have been fined for publicly criticizing homosexuality. Additional examples exist, but you get the picture.

“Hate Speech” in the Work Place

Government employees of the city of Oakland, California were threatened with losing their jobs for posting a flier on the employee bulletin board in support of “marriage,” “natural family” and “family values.” They were warned that if they did it again they would be fired.

The employees challenged the warning in court and lost. On appeal the Ninth Circuit Court concluded that the terms “marriage,” “natural family,” and “family values” could be censored in a municipal workplace as hate speech. The judges opined: “Public employers are permitted to curtail employee speech as long as their legitimate administrative interests outweigh the employees’ interest in freedom of speech.”⁵ The U.S. Supreme Court declined to hear the case so the decision stands.

⁴ See <http://www.wnd.com/index.php?fa=PAGE.view&pageId=69881> (retrieved October 18, 2008).

⁵ Good News Employee Association et. al, v. Joyce M. Hicks, 05-15467 (9th Cir. U.S. Ct. of Appeals 2007).; available at www.profamilylawcenter.com/_docs/45.pdf.

Other employees of the City of Oakland posted information on a “National Coming Out Day,” and a “First Annual Holiday Mixer” for the Gay-Straight Employee Alliance with no repercussions. Increasingly, it has become acceptable to promote homosexuality in the workplace, but not traditional family values.

Other Troublesome Interferences with Religious Speech and Beliefs

It can be political suicide to oppose hate crimes legislation because those who oppose it are made to appear “hateful.” Consider the following examples, all within the last several years, of people being fined or sued for adhering to, promoting or defending their religious beliefs regarding homosexuality:

- Scott Brockie, a printer in Ontario was fined \$5,000 in 1999 by the Ontario Human Rights Commission for refusing to print letterhead for a homosexual advocacy group. He spent \$175,000 fighting the charges. The adjudicator claimed that Brockie was free to express his beliefs in his home or Christian community, but ordered him to provide printing services “to lesbians and gays and to organizations in existence for their benefit.” The parties fought about who would pick up legal costs, and the Court of Appeals decided the printer was on the hook for \$40,000 in legal fees.
- The owners of Adoption.com, the largest Internet resource for couples wishing to adopt children, were sued by homosexuals from California (where “sexual orientation” is protected by law) because they refused to post the profiles of homosexual couples seeking children to adopt on their web site. Rather than submit to their legal demands, Adoption.com chose to eliminate the profiles of all California couples. Unfortunately, their biggest source of revenue was from California.