

LOCAL LAW ENFORCEMENT HATE CRIMES PREVENTION
ACT OF 2007

APRIL 30, 2007.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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. 1592]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 1592) to provide Federal assistance to States, local jurisdic-
tions, and Indian tribes to prosecute hate crimes, and for other pur-
poses, having considered the same, reports favorably thereon with
an amendment and recommends that the bill as amended do pass.

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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 2007”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem.

(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.

(3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.

(4) Existing Federal law is inadequate to address this problem.

(5) A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

(6) Such violence substantially affects interstate commerce in many ways, including the following:

(A) The movement of members of targeted groups is impeded, and members of such groups are forced to move across State lines to escape the incidence or risk of such violence.

(B) Members of targeted groups are prevented from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.

(C) Perpetrators cross State lines to commit such violence.

(D) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(E) Such violence is committed using articles that have traveled in interstate commerce.

(7) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(8) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct “races”. Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.

(9) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.

(10) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States, local jurisdictions, and Indian tribes.

SEC. 3. 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. 4. 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 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 victim services 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, 2008, 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 2008 and 2009.

SEC. 5. 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 com-

bat 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. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of the Treasury and the Department of Justice, including the Community Relations Service, for fiscal years 2008, 2009, and 2010 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. 7. 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 Asso-

ciate 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.**—In this section—

“(1) the term ‘explosive or incendiary device’ has the meaning given such term in section 232 of this title;

“(2) the term ‘firearm’ has the meaning given such term in section 921(a) of this title; and

“(3) the term ‘gender identity’ for the purposes of this chapter 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. 8. DUTIES OF FEDERAL SENTENCING COMMISSION.

The United States Sentencing Commission shall study the issue of adult recruitment of juveniles to commit hate crimes and shall report the Commission’s findings back to the Congress not later than 180 days after the date of the enactment of this Act.

SEC. 9. STATISTICS.

(a) **IN GENERAL.**—Subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note) is amended by inserting “gender and gender identity,” after “race,”.

(b) **DATA.**—Subsection (b)(5) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note) is amended by inserting “, including data about crimes committed by, and crimes directed against, juveniles” after “data acquired under this section”.

SEC. 10. 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. 11. 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 free speech or free exercise clauses of, the First Amendment to the Constitution.

PURPOSE AND SUMMARY

H.R. 1592 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 violent crimes against a person motivated by bias against characteristics for which there is a history of such bias-motivated violence

a felony. It would also amend the Hate Crime Statistics Act to require the collection of data on violent crimes motivated by bias against the victim's perceived gender or gender identity, as well as data on crimes committed by and directed against juveniles.

BACKGROUND AND NEED FOR THE LEGISLATION

OVERVIEW

Hate crimes involve the purposeful selection of victims for violence and intimidation based on bias against their perceived attributes. These crimes are distinguished from, and go far beyond, mere expression of belief, which would be protected under the first amendment. They materially and unacceptably interfere with the full participation of all Americans in the fundamental liberties enjoyed in our democratic society.

As with most criminal activity, bias crimes are investigated and prosecuted at both the Federal and State/local levels, depending on the facts of the case and the needs of the investigation. The Federal Bureau of Investigation (FBI) has the best national data on reported hate crimes, though the reporting program is voluntary.¹ Since 1991, the FBI has received reports of more than 113,000 hate crimes. For the year 2005 (for which the most current data are available), the FBI received reports from law enforcement agencies identifying 7,163 bias-motivated criminal incidents. Law enforcement agencies identified 8,795 victims arising from 8,373 separate criminal offenses. For the year 2005, the most current data available, the FBI compiled reports from law enforcement agencies identifying 7,163 bias-motivated criminal incidents. Law enforcement agencies identified 8,795 victims arising from 8,373 separate criminal offenses. As in the past, racially-motivated bias accounted for more than half (54.7%) of all incidents. Religious bias accounted for 1,227 incidents (17.1%), sexual orientation bias accounted for 1,017 incidents (14.2%), followed by ethnicity/national origin bias with 944 incidents (13.7%). While these numbers are disturbing enough, indications are that hate crimes are significantly under-reported.

H.R. 1592, the "Local Law Enforcement Hate Crimes Prevention Act," is intended to address deficiencies in the principal current Federal hate crime statutes: 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 a limited set of hate crimes committed on the basis of race, color, religion, or national origin.²

There are two deficiencies with current law that have limited the Federal Government's ability to work with State and local law enforcement agencies in the investigation and prosecution of hate crimes, and led to acquittals in several of the cases in which the Department of Justice has determined a need to assert Federal jurisdiction to "backstop" local efforts. First, it provides no coverage for violent hate crimes committed because of the victim's perceived sexual orientation, gender, gender identity, or disability. Second, it

¹ Approximately 4,000 police agencies across the nation—including two of the top ten largest cities in America, New York City and Phoenix—did not participate in this Hate Crimes Statistics Act data collection effort.

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.

requires proof that the crime was committed with the intent to interfere with the victim's participation in one of six specifically defined federally protected activities.

To address the jurisdictional limitations under existing law, H.R. 1592 creates a new section 249 in the Criminal Civil Rights Chapter (chapter 13) of title 18 of the United States Code. New 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, section 249(a)(2) prohibits the intentional infliction of bodily injury if the incident has a nexus, as defined in the bill, to interstate commerce.³ Section 249 expands the reach of the Federal criminal laws to address both sets of limitations. It provides the Federal Government the tools to effectively pursue the significant Federal interest in eradicating bias-motivated violence 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 will continue to do so under this legislation.⁴ Under current law, concurrent Federal jurisdiction is necessary in the hate crimes context to permit the devotion of Federal resources to assist State and local law enforcement in the investigation and prosecution of hate crimes. In limited circumstances, however, it is necessary to use the Federal criminal civil rights statutes to "backstop" State and local efforts. Such backstop is necessary, 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. It 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" in his or her participation in any of six "federally protected activities" specifically enumerated in the statute.⁵ To prove a violation of section

³The approach taken in this legislation is identical 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.

⁴Since 1991, for example, the FBI has received reports of almost 114,000 hate crimes. During that period, however, the Department of Justice has brought fewer than 100 cases under 18 U.S.C. § 245. See <http://www.fbi.gov/ucr/hc2005/index.html>.

⁵The 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) apply-

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 specified 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.

This 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 brutality 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 section 245(b), even where the proof of racially motivated violence was not in doubt. Expanding the circumstances under which certain hate crimes may 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 permit the Federal Government to provide assistance to State law enforcement in a wider range of circumstances, and criminalize instances of vicious bias-motivated crimes that presently fall outside the reaches of the Federal criminal laws.

Permitting the Federal Government to Assist States and Local Law Enforcement. As to the first of these reasons, when Federal jurisdiction has existed in the limited circumstances covered by section 245(b), the Federal Government's resources, forensic expertise, and experience in the identification and proof of bias-motivated violence and criminal networks have often provided an invaluable investigative complement to the familiarity of local investigators with the local community and its people and customs. Through this cooperation, State and Federal law enforcement officials have been able to bring the perpetrators of hate crimes swiftly 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 targeted 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 assistance of great value 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 decision as to its legal authority to lend assistance to the State prosecution.

ing 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).

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 section 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. Thirty-four percent of the joint State/Federal church arson investigations conducted during the 2-year life of the task force resulted in arrests of one or more suspects on State or Federal charges, an arrest rate that was more than double the normal 16% rate of arrest in all arson cases nationwide (most of which are investigated by local officials without Federal assistance). More than 80% of the suspects arrested in joint State/Federal church arson investigations during the life of the Task Force were prosecuted in State courts under State laws.

This bill will similarly enhance the ability of the FBI and other Federal law enforcement entities to provide assistance to and work in partnership with 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 efforts increased the number of arrests and prosecutions in the church arson context. And, as noted, it is also believed that a large majority of hate crimes prosecutions will continue to be brought in State court under State law.⁶

Establishing Appropriate Federal Jurisdiction. In some circumstances, the Federal Government needs to be able to go beyond being simply an investigative partner of State and local law enforcement, and to bring Federal criminal charges. Where State and local prosecutors fail to bring appropriate State charges, or where State laws or the results of State prosecutions are inadequate to vindicate the Federal interest in prosecuting hate crimes, it is imperative that the Federal Government be able to step in and bring effective Federal prosecutions to "backstop" local law enforcement. Unfortunately, the "double-intent" requirement of 18 U.S.C. § 245(b)(2)—particularly the "intent to interfere with a federally protected activity" requirement—has precluded the Department of Justice from performing an effective backstop role with regard to a number of heinous hate crimes.

In testimony before this Committee, then 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. 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

⁶*Hate Crimes Violence: Hearings Before the House Comm. on the Judiciary*, 106th Cong. 13, 17–18 (1999) (testimony of Eric Holder, Deputy Attorney General).

of the right to participate in any “federally protected activity.” The government’s proof that the defendants went out looking for African-Americans to attack was insufficient in the jurors’ minds to satisfy the requirements of section 245(b)(2).

Another section 245(b)(2) case in which the jurors explained their verdict 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.”

In each of these examples, one or more persons committed an 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, and the extra intent requirement of section 245(b)(2)—that the hate crime be additionally linked to the victim’s participation in one of the enumerated federally protected activities—prevented the Department of Justice from acting effectively.

Currently, Federal authority can turn on such artificial 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 at which a racially motivated attack 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 arbitrary distinctions.

Thus, in connection with prosecutions of hate crimes based on the victim’s race, color, national origin, new section 249(a)(1) appropriately reaches those crimes of violence that cause bodily injury, or certain attempts. By so doing, the Act strengthens the Federal Government’s ability to assist State and local law enforcement authorities, and strengthens the Federal Government’s ability to prosecute such crimes when it must do so.

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

Behind each hate crime statistic is an individual or community targeted for violence for no other reason than race, religion, ethnicity, sexual orientation, gender, gender identity, or disability. As law enforcement authorities and civic leaders have learned, a failure to address the problem of violent bias crime can lead to widespread tension that damages the social fabric of the community at large. The Supreme Court recognized this wider harm in *Wisconsin v. Mitchell* as meriting the designation of a hate crime as a specific offense.⁷

The existing general Federal hate crimes laws, however, do not prohibit hate crimes committed because of bias based on the vic-

⁷ 508 U.S. 47 (1993).

tim's actual or perceived sexual orientation, gender, gender identity, or disability. There is increasing consensus among law enforcement officials and policymakers that hate crimes motivated by such biases are 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.⁸ Since 1994, gender identity has been added to a plethora of State and local hate crimes statutes that are based on the same analytical understanding of violent prejudice, in recognition that criminals target such persons for particularly violent assault.

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 2005 FBI statistics, hate crimes based on sexual orientation constituted the third highest category reported (1,017 incidents) and made up 14.2% of all reported hate crimes. From 1991 through 2005—the last year for which data exists—there have been more than 15,000 reported hate crimes based on sexual orientation. In 1991, the FBI reported 425 hate crimes based on sexual orientation. In 2000, that number had grown to 1,299, an increase of more than 200%. And even these statistics may significantly understate the number of hate crimes based on sexual orientation that actually are committed in this country.

Many victims of anti-lesbian, anti-gay, and anti-transgender incidents 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 under-reporting, the trend in State statistics shows that gays and lesbians are increasingly the targets of crime.”⁹

Despite the prevalence of violent acts committed against persons because of their sexual orientation, such crimes are not covered by section 245 unless there is also another basis for Federal jurisdiction, such as race-based bias. 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 an instructive example of the limitations in current law. Despite the

⁸The Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322 (1994). Section 280003a of this Act provides:

(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.

(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. . . .

⁹*Hate-crimes experts say statistics don't tell story: Many cases unreported; special law rarely used*, DALLAS MORNING NEWS, Nov. 8, 1999.

clear evidence that the murder of Mr. Shepard was motivated by animus based on Mr. Shepard's sexual orientation, the Federal Government lacked jurisdiction to act as a full partner with State and local officials in the investigation of this horrifying crime, or to bring Federal hate crime 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.¹⁰

The situation confronting the Albany County Sheriff's office in the Shepard case stands in stark contrast to what occurred in the Jasper, Texas, case mentioned above. Because the murder of James Byrd, Jr. was covered under the 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.¹¹

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 24 States and the District of Columbia have hate crimes statutes that include gender among the categories of prohibited bias motives. H.R. 1592's amendment to title 18 would make Federal hate crimes laws more consistent with the Federal position taken in VAWA, allowing Federal officials to work together with State and local law enforcement officials in the investigation and prosecution of violent gender-based hate crimes.

H.R. 1592 will not result in the Federalization of all rapes, other sexual assaults, or acts of domestic violence. Rather, 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. Transgender people are often targeted for hate violence based on their non-conformity with gender norms, their perceived sexual orientation, or both. Hate crimes against transgender people tend to be particularly violent. Compounding the challenges with prosecuting these crimes, transgender people are frequently mistrustful of local law enforcement authorities because police often lack training and understanding of transgender

¹⁰Excerpts of press statement by Commander David O'Malley, Sept. 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."

¹¹SEN. REP. NO. 103-138 (1993) (testimony of Prof. Burt Neuborne).

people. This lack of understanding illustrates 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 cases of transgender hate crimes.

The murder of Brandon Teena, dramatized in the movie “Boys Don’t Cry,” is illustrative of the plight of this community. Mr. Teena was raped and later killed after the discovery of his biological gender by two acquaintances. Prior to his murder, he 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 he was stabbed and beaten to death by the same perpetrators. In the civil suit brought by his mother, the court found that the county was partially responsible for Teena’s death, and characterized the Sheriff’s behavior as “extreme and outrageous.”¹²

Currently, ten States include protections for transgender individuals in their hate crime laws. Additionally, six States and 71 local jurisdictions do so in their anti-discrimination laws. There has also been explicit coverage of gender identity in the anti-discrimination policies of leading corporations.¹³ According to a poll commissioned by the Human Rights Campaign Foundation in 2002, sixty-eight percent of Americans believe that the Federal Government needs laws to protect against anti-transgender hate crimes.

Disability. Congress has shown an enduring commitment over the past decade to protecting persons with disabilities from discrimination. In the 1988 amendments to the Fair Housing Act, as well as the Americans with Disabilities Act of 1990, Congress extended civil rights protections to persons with disabilities in many traditional civil rights contexts. Congress amended the Hate Crimes Statistics Act in 1994 to require the FBI to collect information about incidents crimes of violence based on bias against the disabled from State and local law enforcement agencies. Currently, 24 States and the District of Columbia have specific criminal statutes directed at disability-based hate crimes of violence.

LEGAL ANALYSIS

Federalism

The bill is carefully drafted to ensure that the Federal prosecution of hate crimes motivated by animus directed at the newly added characteristics are limited to 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 new section 249(b) limits Federal involvement in several important ways. First, the bill requires proof that offenses in the four new categories be motivated by animus based prejudice against a person’s actual or perceived sexual orientation, gender, gender identity, or disability. Second, the bill requires a nexus to interstate commerce for these hate crimes. Third, the bill limits the prohibitions to acts of violence involving bodily injury or death, and a limited set of attempts to cause bodily injury

¹² OMAHA WORLD-HERALD, Apr. 21, 2001; ASSOC. PRESS, Oct. 5, 2001; N.Y. TIMES, April 21, 2001; CHI. TRIB., Apr. 21, 2001.

¹³ This list includes 53 of the Fortune 500 companies, including AT&T, IBM and Toys “R” Us.

or death, there are no misdemeanor provisions which would permit Federal involvement in prosecuting minor offenses with no bodily injury.

Finally, the bill requires certification, by the Attorney General or other specified high-ranking Department of Justice official, before any prosecution of an offense described in section 7 of the Act may be undertaken. The certifying individual must have “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.” The certifying individual must also have consulted with State or local law enforcement officials regarding the prosecution and determined that: (1) the State does not have jurisdiction or does not intend to exercise jurisdiction; (2) the State has requested the Federal Government to assume jurisdiction; (3) the State does not object to the Federal Government assuming jurisdiction; or (4) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

This heightened certification requirement is intended to ensure that the Federal Government will assert the new hate crimes jurisdiction in a principled and properly limited fashion, consistent with procedures under the current Federal hate crimes statute. Additionally, based upon the testimony of Department of Justice officials, the Committee anticipates that general Department-wide prosecutorial policies will have the effect of further limiting the cases prosecuted by the Federal Government.

Constitutionality

The bill is consistent with a long history of Federal involvement in combating crimes of violence based on prejudice. As the Department of Justice articulated in a 2000 Statement of Administration Position,¹⁴ the 13th amendment broadly authorizes Congress to regulate acts of violence committed on the basis of race, color, religion, or national origin, providing ample constitutional basis for section 7(a) of the bill, which addresses bias crimes in those categories.

With respect to section 7(b) of the bill, the Commerce Clause provides Congress the authority to prosecute acts of violence motivated by animus based on actual or perceived sexual orientation, gender, gender identity or disability, where the crime has the requisite connection to interstate commerce. To avoid possible constitutional concerns arising from the decision in *United States v. Lopez*,¹⁵ 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 offenses in new section 249(a)(2).

This interstate commerce element was drafted with customary breadth so as to reach all cases within the scope of Congress’s powers under the Commerce Clause. Pursuant to section 249(a)(2), the Government must prove, in hate crimes prosecutions involving conduct motivated by animus based on actual or perceived sexual ori-

¹⁴Statement of Administration Position, June 13, 2000 (Assistant Attorney General Robert Raben).

¹⁵514 U.S. 549 (1995).

entation, gender, gender identity, or disability, that in connection with the offense, the defendant “[traveled] across a State line of national border;” “use[d] a channel, facility or instrumentality of interstate or foreign commerce;” “employ[ed] a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce;” “interfere[d] with commercial or other economic activity in which the victim [was] engaged at the time of the conduct;” or “otherwise affect[ed] interstate or foreign commerce.”¹⁶

The interstate commerce nexus is analogous to that required in many other Federal criminal statutes. The Church Arson Prevention Act of 1996,¹⁷ for example, makes it a crime to destroy religious property if the offense “is in or affects interstate commerce.”¹⁸ Section 249 is drafted to comport with Supreme Court guidance in *Lopez*¹⁹ and *U.S. v. Morrison*.²⁰

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 section 249(a)(1) and section 249(a)(2).²¹

Basis for Addition of New Categories of Bias

The new classifications of sexual orientation, gender, gender identity, and disability are being added to those receiving Federal legal protection on the basis of accumulated evidence, reflected in jurisprudence²² and other Federal and State laws.²³

Free Speech

H.R. 1592 is carefully crafted so as to distinguish crimes of violence based on bias from religious or other expression protected under the first amendment. The legislation does not prohibit name-calling, verbal abuse, or other forms of negative or hateful expression; it prohibits only violent actions that result in death or bodily injury. An amendment offered by Mr. Davis, accepted by voice vote, adds a rule of construction that further clarifies that freedom of re-

¹⁶This is notably more restrictive than the interstate commerce proof required in the Animal Fighting Prohibition Enforcement Act of 2007 (H.R. 137) and the amendment to H.R. 1592 during the Committee’s markup of the bill.

¹⁷18 U.S.C. § 247.

¹⁸18 U.S.C. § 247(b).

¹⁹514 U.S. 549 (1995).

²⁰529 U.S. 598 (2000) (setting forth outer reaches of commerce power in invalidating civil provisions of Violence Against Women Act)

²¹The 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.

²²See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992); *Wisconsin v. Mitchell*, 508 U.S. 47 (1993).

²³See also the Allport Scale, devised by psychologist Gordon Allport and 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), providing a “Scale of Prejudice” based on various indicia of prejudice in escalating severity of manifestation. GORDON ALLPORT, *THE NATURE OF PREJUDICE* (Addison-Wesley 1954).

ligious and other expression protected under the first amendment is in no way impaired.

In furtherance of this protection, new section 249(d) prohibits introducing evidence of association or expression to prove that a crime has been committed, unless it specifically relates to the offense. Otherwise, such evidence may be used only for impeachment purposes. This provision recognizes that evidence that a person has expressed, for example, religious or philosophical beliefs that some might characterize as hateful or intolerant, or that a person belongs to an organization, including a religious organization, that holds or professes beliefs consistent with the crime charged, with little or no other evidence of the person's culpability in the charged offense, can be unfairly prejudicial. Thus, evidence of an accused's expressions or group memberships could be admitted at trial only where they can be shown to be specifically linked to the person's involvement in the charged offense.

This provision requires the district court to employ a heightened version of the customary relevance test, taking into account the policy values associated with protecting the rights of free religious expression, free speech, and free association and considering the potential prejudice if the evidence at issue consists of unpopular speech or association with an unpopular group.

This provision also recognizes, however, that evidence of an accused's speech, expression, or association may be properly relevant and not unfairly prejudicial if such evidence can be shown to be related to the crime at issue. An isolated racial slur remote in time to the charged offense, or merely incidental to the motive of the charged offense (for example, a racial slur uttered in the conduct of a robbery where robbery is manifestly the motive), or mere participation in an organization that holds and professes strong and negative views toward a given group, would presumably be excluded. In contrast, an accused's 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, especially if close in time to the alleged offense, may indicate the motivation for the offense and properly be admissible as evidence—if there is other independent evidence of the accused's participation in the crime. This careful weighing of relevance against prejudice will help ensure an individual is not prosecuted simply for holding and expressing views, no matter how abhorrent.

This provision will not provide a license for a witness or the accused 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 unfairly limiting a party's ability to impeach a witness.

Finally, 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*²⁴ and *Wisconsin v. Mitchell*.²⁵ In *Wisconsin v. Mitchell*, the Supreme Court made clear 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

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on 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.

COMMITTEE CONSIDERATION

On April 24, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered the bill H.R.1592 favorably reported by voice vote, a quorum being present.

On April 25, 2007, the Committee met in open session and ordered the bill H.R. 1592 favorably reported with amendments, by a rollcall vote of 20 to 14, 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. 1592:

1. A motion by Mr. Nadler to table the appeal of the ruling of the Chairman that an amendment by Mr. Jordan designating "unborn child" status, under certain circumstances, for coverage under the Act was not germane. Defeated 17 to 17.

ROLLCALL NO. 1

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

²⁴ 505 U.S. 377 (1992).

²⁵ 508 U.S. 47 (1993).

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Gutierrez			
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Davis			
Ms. Wasserman Schultz	X		
Mr. Ellison	X		
Mr. Smith (Texas)		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Cannon		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Total	17	17	

2. A motion by Mr. Sensenbrenner to adjourn. Defeated 20 to 17.

ROLLCALL NO. 2

	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		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	17	20	

3. An appeal by Mr. Chabot of the ruling of the Chairman that the amendment by Mr. Jordan was not germane. Chairman's ruling upheld 21 to 17.

ROLLCALL NO. 3

	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	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Ms. Sánchez	X		
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Gutierrez			
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Davis	X		
Ms. Wasserman Schultz	X		
Mr. Ellison	X		
Mr. Smith (Texas)		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Cannon		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Total	21	17	

4. An amendment by Mr. Gohmert to remove from the bill's coverage crimes committed based upon animus associated with sexual orientation or gender identity. Defeated 18 to 13.

ROLLCALL NO. 4

	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		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot			
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Total	13	18	

5. An amendment by Mr. Forbes to cover crimes based upon animus associated with the victim's status as a member of the armed forces. Defeated 16 to 12.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis	X		
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot			
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller			
Mr. Issa			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King			
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	12	16	

6. An amendment by Mr. Feeney to require that the conduct to be outlawed substantially affect interstate or foreign commerce. Defeated 19 to 12.

ROLLCALL NO. 6

	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. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	

ROLLCALL NO. 6—Continued

	Ayes	Nays	Present
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Chabot			
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King			
Mr. Feeney	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Total	12	19	

7. An amendment by Mr. Pence to provide as a rule of construction that nothing in the criminal provisions of the Act limit the religious freedom of any person or group under the Constitution. Defeated 20 to 15.

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		X	
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		

ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Goodlatte	X		
Mr. Chabot			
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King			
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	15	20	

8. An amendment by Mr. Goodlatte to cover crimes based upon animus associated with the victim's status as a senior citizen who has attained the age of 65 years. Defeated 16 to 12.

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		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz			
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks			
Mr. Gohmert	X		

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Jordan	X		
Total	12	16	

9. An amendment by Mr. Goodlatte to cover crimes based upon animus associated with the victim's status as a pregnant woman. Defeated 16 to 15.

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		X	
Ms. Waters			
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	15	16	

10. An amendment by Mr. Chabot to cover crimes based upon animus associated with the victim's status as a witness in a judicial proceeding. Defeated 20 to 15.

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		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	15	20	

11. An amendment by Mr. Chabot to cover crimes based upon animus associated with the victim's status as a victim of a prior crime. Defeated 20 to 15.

ROLLCALL NO. 11

	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		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	

ROLLCALL NO. 11—Continued

	Ayes	Nays	Present
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	15	20	

12. An amendment by Mr. Issa to amend the bill to state that the terms “person,” “persons,” “victim,” or “victims” as used in the bill shall not include unborn children at any stage of development. Defeated 33 to 0.

ROLLCALL NO. 12

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			Pass
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			Pass
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff			
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison			
Mr. Smith (Texas)			Pass
Mr. Sensenbrenner, Jr.		X	

ROLLCALL NO. 12—Continued

	Ayes	Nays	Present
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Cannon		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Total	0	33	3 (Pass)

13. An amendment by Mr. Gohmert to prohibit evidence of religious expression or association as substantive evidence at trial. Defeated 20 to 16.

ROLLCALL NO. 13

	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		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks			

ROLLCALL NO. 13—Continued

	Ayes	Nays	Present
Mr. Gohmert	X		
Mr. Jordan	X		
Total	16	20	

14. An amendment by Mr. Forbes to cover crimes based upon animus associated with the victim's status as a child who has not attained the age of 18 years. Defeated 21 to 16.

ROLLCALL NO. 14

	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		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Total	16	21	

15. An amendment by Mr. King to replace “gender” with “sex” in several places in the bill, strike the definition of “gender identity,” and strike the provision of the bill requiring the keeping of statistics of hate crimes based on gender and gender identity. Defeated 20 to 15.

ROLLCALL NO. 15

	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		X	
Ms. Waters			
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	15	20	

16. An amendment by Mr. King to change the name of the Act to the “Local Law Enforcement Thought Crimes Prevention Act of 2007.” Defeated 21 to 13.

ROLLCALL NO. 16

	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		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	

ROLLCALL NO. 16—Continued

	Ayes	Nays	Present
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	13	21	

17. H.R. 1592 was ordered favorably reported by a vote of 20 to 14.

ROLLCALL NO. 17

	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	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Ms. Sánchez	X		
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Davis	X		
Ms. Wasserman Schultz			
Mr. Ellison	X		
Mr. Smith (Texas)		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble			
Mr. Gallegly		X	

ROLLCALL NO. 17—Continued

	Ayes	Nays	Present
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Cannon		X	
Mr. Keller		X	
Mr. Issa			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney			
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Total	20	14	

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 section 4(b)(7) of the Act, there is authorized to be appropriated \$5,000,000 for each of fiscal years 2008 and 2009.

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. 1592, 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, 2007.

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. 1592, the Local Law Enforcement Hate Crimes Prevention Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for Federal costs), who can be reached at 226–2860, and Melissa Merrell (for the State and local impact), who can be reached at 225–3220.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1592—Local Law Enforcement Hate Crimes Prevention Act of 2007.

SUMMARY

H.R. 1592 would establish certain hate crimes as new federal offenses and would direct the Department of Justice (DOJ) to expand its data collection efforts relating to hate crimes. The bill also would authorize the appropriation of:

- \$5 million for each of fiscal years 2008 and 2009 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 combat juvenile hate crimes; and
- Such sums as may be necessary for fiscal years 2008 through 2010 for additional personnel in DOJ and the Department of the Treasury to prevent, investigate, and prosecute hate crimes.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1592 would cost \$20 million over the 2008–2012 period. This legislation could affect direct spending and receipts, but CBO estimates that any such effects would not be significant in any year.

H.R. 1592 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. 1592 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

	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	10	10	*	*	*
Estimated Outlays	2	6	5	4	3

Note: * = less than \$500,000.

BASIS OF ESTIMATE

Based on spending for similar activities in recent years, CBO estimates that the bill's authorization for grants to combat juvenile hate crimes would cost an additional \$5 million for each of fiscal years 2008 and 2009—the same amount that the bill would specifically authorize for grants to State and local governments to combat hate crimes. We assume that the necessary amounts (a total of \$10 million a year for 2008 and 2009) will be appropriated by the start of each fiscal year and that outlays 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 federal 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 2008 through 2010, subject to the availability of appropriated funds.

DOJ currently compiles and summarizes data on hate crimes committed in the United States each year. H.R. 1592 would require this annual report to include crimes committed on the basis of gender or gender identity and hate crimes affecting juveniles. CBO estimates that it would cost DOJ less than \$500,000 each year from appropriated funds to carry out this provision.

Because those prosecuted and convicted under H.R. 1592 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 MANDATES

H.R. 1592 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 \$20 million to combat, investigate, and prosecute hate crimes. The bill also would authorize the Attorney General to provide technical, forensic, and prosecutorial assistance to those governments. Any costs 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:

Peter H. Fontaine
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. 1592 is provided to assist State and local law enforcement in the investigation and prosecution of hate crimes and to permit Federal prosecution of certain hate crimes.

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 13th and 14th 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. 1592 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 sets forth the short title of the bill as the “Local Law Enforcement Hate Crimes Prevention Act of 2007.”

Sec. 2. Findings. This section includes findings relating to the problem of violent bias crime and aspects of Federal jurisdiction over such incidents.

Sec. 3. 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. 4. 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 State or local hate crime law. Priority is given to crimes by offenders who acted in more than one State and to rural jurisdiction facing extraordinary expenses.

Subsection (b) creates a grant program under the authority of the Department of Justice 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 2008 and 2009.

Sec. 5. Grant Program. This section creates a grant program under the authority of the Department of Justice to combat hate crimes committed by juveniles, including programs to train law enforcement in identifying, investigating, prosecuting, and preventing bias crimes.

Sec. 6. Authorization for Additional Personnel to Assist State, Local and Tribal Law Enforcement. This section authorizes appropriations of sums necessary, if any, to support the investigation and prosecution of alleged violations of the bill’s prohibitions.

Sec. 7. Prohibition of Certain Hate Crime Acts. This section adds a new section 249 to title 18 of the United States Code. New 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 to interfere with the victim’s participation in a federally protected activity. An offense under new section 249(a)(1) will be prosecuted as a felony. It requires 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.

New section 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. There is no “federally protected activity” requirement as in 18 U.S.C. § 245, but there is required proof of a commerce clause nexus as an element of the offense.

New section 249(b) requires a detailed, written certification from the Attorney General before a prosecution may be brought under section 249(a)(1) or (a)(2).

New section 249(d) 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 offense. 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 also be introduced for impeachment or rebuttal.

Sec. 8. Duties of Federal Sentencing Commission. This section requires the United States Sentencing Commission to issue a study on the recruitment of juveniles by adults to commit hate crimes within 180 days of enactment of this legislation.

Sec. 9. Statistics. This section amends the Hate Crimes Statistics Act to require data collection on crimes motivated by the victim’s perceived gender and gender identity. The provision also requires data collection on crimes committed by and directed against juveniles.

Sec. 10. Severability. This section provides that a court holding that any provision of the bill is unconstitutional shall not affect other provisions of the bill.

Sec. 11. Rule of Construction. This section provides that nothing in the Act shall be construed to prohibit expressive conduct or activities protected by the first amendment to 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):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 13—CIVIL RIGHTS

Sec.						
241.	Conspiracy against rights.					
	* * * * *					
249.	<i>Hate crime acts.</i>					
	* * * * *					

§ 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.**—In this section—

(1) the term “explosive or incendiary device” has the meaning given such term in section 232 of this title;

(2) the term “firearm” has the meaning given such term in section 921(a) of this title; and

(3) the term “gender identity” for the purposes of this chapter 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.

* * * * *

HATE CRIME STATISTICS ACT

AN ACT To provide for the acquisition and publication of data about crimes that manifest prejudice based on certain group characteristics.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the “Hate Crime Statistics Act”.

(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, *gender and gender identity*, religion, disability, 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.

* * * * *

(5) The Attorney General shall publish an annual summary of the data acquired under this section, *including data about crimes committed by, and crimes directed against, juveniles.*

* * * * *

DISSENTING VIEWS

We oppose H.R. 1592 as an unconstitutional threat to religious freedom, freedom of speech, equal justice under law and basic federalism principles.

Justice should be blind to the personal traits of victims. Under the Democrats' hate crime bill, H.R. 1592, 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, sex, sexual orientation, disability or other protected status. The only trait that should matter is the victim's humanity.

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, 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, sex, 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, and 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 under conspiracy law or section 2 of title 18, which makes criminally liable any person who aids, abets, counsels, commands, induces or procures the commission of the crime, or one 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 to causing hateful violent acts. 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*,¹ 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 2005, 6 were murders and 3 were rapes. Only 6 of approximately 15,000 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 problems 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. The majority defeated our attempts to address these problems.

H.R. 1592 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; hate crimes statutes that criminalize bias motivated violence are likely to survive a first amendment challenge.²

However, hate crimes legislation can have a chilling effect on speech and first amendment rights by injecting criminal investiga-

¹ 529 U.S. 598 (2000)

² See *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 hate crime enhancement for a violent crime finding that restriction on speech was justified when linked to violent act).

tions 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 of involvement in the criminal process.

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 9,430 “hate crimes” recorded by the FBI in 1999, by far the largest group was labeled “intimidation.” 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. 1592 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.

A Federal law criminalizing violent actions taken because of the victim's immutable 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 dele-

gated 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.”³

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 scope.

H.R. 1592 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, as well as the 13th, 14th, and 15th amendments.

Interstate Commerce Clause

The Supreme Court, in *United States v. Morrison*, 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.⁴ The Court concluded that upholding 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.⁵

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 5 of the 14th amendment.⁶

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 where Congress uses its enforcement powers under section 5 of the 14th amendment, the Court has said, it must identify conduct that violates 14th amendment rights, and it 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. For example, the Court observed in *Florida Prepaid*, a challenge to the Voting Rights

³*United States v. Lopez*, 514 U.S. 549, 561 n. 3 (quoting *United States v. Emmons*, 410 U.S. 396, 411–12 (1973)).

⁴529 U.S. 598 (2000)

⁵*Id.* at 615–16.

⁶See *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).

Act, Congress developed an “undisputed record of racial discrimination” and upheld the statute under this standard.⁷ In *City of Boerne*, however, 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.⁸ Similarly, in *Florida Prepaid*, the Court found 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.⁹

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. Until Congress engages in this sort of legislative spadework, it will not be able to justify its findings in this bill and the 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 2 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 incidence” of slavery.¹⁰

The Court has addressed Congress’s power under section 2 in only a few cases, the chief of which is *Jones v. Alfred H. Mayer Co.*¹¹ 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 or not. Section 2 of the amendment “clothed Congress with power to pass all laws necessary and proper for abolishing all

⁷ *Florida Prepaid*, 527 U.S. at 640.

⁸ *City of Boerne*, 521 U.S. at 530–32.

⁹ *Florida Prepaid*, 527 U.S. at 645–46.

¹⁰ See *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971).

¹¹ 392 U.S. 409 (1968).

badges and incidents of slavery in the United States.”¹² Therefore, the Court observed, “[s]urely Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation.”¹³ The Court, however, has not provided much guidance beyond *Jones* on what constitutes “the badges and the incidents of slavery.”¹⁴

Congress should tread carefully before it chooses to pass a hate crimes statute on the basis of section 2 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 1995, 7,947 hate crime incidents were reported. Statistics for the last four years, 2002 through 2005, have shown a decline in the number of hate crimes reported. In 2005, for example, 7,163 hate crimes were reported.

Of the reported hate crimes in 2005, 6 were murders, 3 were rapes, and a majority of the crimes were characterized as “intimidations” as opposed to any involving bodily injury. As an example, for 2005, there were 1,017 violent incidents based on bias for sexual orientation, or approximately 4 incidents per million of population. In contrast, the national rate of violent crime in 2005 was 1.4 million, or 492 incidents per 1 million of population.¹⁵

Fifty-six percent of the crimes involved racial bias; 11 percent anti-religion bias; 14 percent national origin bias; and 14 percent sexual orientation bias. Anti-disability and anti-sexual identity bias

¹²*Jones*, 392 U.S. at 439.

¹³*Id.* at 440.

¹⁴*See, e.g., Carpenters, Local 610 v. Scott*, 463 U.S. 825 (1983); *Griffin v. Breckenridge*, 403 U.S. 88 (1971).

¹⁵The 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.” A 1994 amendment 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).

was less than 1 percent. The Hate Crimes Statistics Act does not require collection of hate crimes statistics for violent crimes alleged to be motivated by “gender identity.”

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 both tried to pass legislation pertaining to hate crimes in the past two years, and in both cases the legislation has been struck down by the courts.

NEED TO PROTECT MILITARY, CHILDREN, POLICE, ELDERLY, VICTIMS AND WITNESSES

In protecting a 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 members of the Armed Forces, law enforcement officers, children, senior citizens, witnesses, pregnant women, and crime victims. We can see no reason to distinguish among these groups—all of them deserve heightened protection against hate-motivated crimes. The majority has made its priorities clear, and has done a disservice to our Armed Forces, police officers, children, senior citizens, pregnant women, witnesses and crime victims.

Members of the Armed Forces

We honor our men and women of the military because of their patriotism and their commitment to protecting our freedom and 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, last year 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 last year in passing legislation to restrict the right of protesters to interfere with military funerals.

With the rising debate over the Iraqi war, we are seeing increasing threats to Iraqi war veterans. In 2005, during a peace rally, a war veteran was spit on by a protester at the rally. Such incidents were all too commonplace 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. Hate crimes against our Armed Forces must be punished at a heightened level just like the other groups that are given protection under this Act.

Law Enforcement Officers

Hate crimes against police officers—because they are police officers—occur in far larger numbers than any of the hate crimes reported by the FBI. According to the Bureau of Justice Statistics, 55 law enforcement officers were feloniously killed in the United States in 2005. The previous year, 57 officers were killed in the United States. In the ten-year period from 1996 through 2005, a total of 575 law enforcement officers were feloniously killed in the line of duty in the United States, 102 of whom were killed in ambush situations—in entrapment or premeditated situations. If not for the advent of bulletproof vests, an additional 400 officers would have been killed over the last decade.

More than 57,000 law enforcement officers were assaulted in 2005, or one in every 10 officers serving in the United States. And the numbers have been increasing since 1999, even as other crime has decreased or held steady. As the executive director of the Fraternal Order of Police noted, “there’s less respect for authority in general and police officers specifically. The predisposition of criminals to use firearms is probably at the highest point in our history.”

If we are going to provide heightened protection for certain groups, we should surely include police officers who are attacked, assaulted and killed because of the uniform that they wear, the job that they do, and their status as a police officers.

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*,¹⁶ 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.¹⁷

During consideration of H.R. 1592, 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 stat-

¹⁶ 127 S.Ct. 1610 (2007).

¹⁷ *Id.* at 1632.

ute. 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.

In response to the chair’s ruling, Mr. Issa of California offered an amendment to amend the definition of “person” within the statute to expressly exclude unborn children. Given the opportunity to clear up the ambiguity as to whether unborn children are persons under the act, the Committee unanimously voted not to exclude the unborn from the definition of person, essentially turning the chair’s earlier ruling on Mr. Jordan’s amendment on its head. Unfortunately, the ambiguity Mr. Issa’s amendment attempted to correct persists.

Children

Hate crimes against children, that is, acts of violence perpetrated against them because of their status as children, occur in far larger numbers than any of the hate crimes reported by the FBI. Our country has been shocked by a series of brutal attacks against children. In 2005, our Nation was horrified by the kidnapping and murders of the members of the Groene family by a convicted sex offender.

Two well-publicized tragedies that same year in Florida, in which 9-year-old Jessica Lunsford and 13-year-old Sarah Lunde were murdered by convicted sex offenders, further underscore the need for quick congressional action to address the danger posed by individuals who prey on children.

In addition to the widely-reported tragedies that have rightly brought this issue to the forefront, the statistics regarding the frequency of such heinous crimes are staggering. One in 5 girls and 1 in 10 boys are sexually exploited before they reach adulthood, yet less than 35 percent of the incidents are reported to authorities.

According to the Department of Justice, 1 in 5 children (ages 10 to 17 years old) receive unwanted sexual solicitations online. Additionally, 67 percent of the all victims of sexual assault are juveniles (under the age of 18), and 34 percent are under the age of 12.

Department of Justice statistics underscore the staggering toll that violence takes on our youth. In 2005, over 1550 children under the age of 18 were murdered, up from the 2003 figure of 1528. The National Crime Victimization Survey for 2005 estimates that over 1.5 million violent crimes were committed against children between the ages of 12 and 19. The national crime survey does not account for victims under the age of 12.

National Incident Based Reports from twelve States during the period of 1991 to 1996 show that 34 percent of victims were under age 12. One out of every seven victims of sexual assault was under the age of 6.

If we are going to provide heightened protection for categories of groups, we should surely include our nation’s children who are attacked, assaulted and killed because of one thing—their innocence as children.

Pregnant Women

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.¹⁸

On December 16, 2004, Bobbi Jo Stinnett, in Skidmore, Missouri, was 23 years old when she was strangled to death and had her unborn child cut from her womb. 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.

Just last year, on September 22, 2006, 23-year-old Jimella Tuntsall was murdered in East St. Louis her unborn child cut from her womb by Tiffany Hall, a woman who frequently babysat her 3 other children.

Autopsy results showed that Tuntsall bled to death after having her abdomen cut open by scissors. Tuntsall's three other children, ages 7, 3, and 2 were found dead and stuffed into a dryer shortly after.

On September 12, 1996, at Wright-Patterson AFB, Airman Gregory Robbins assaulted his wife, Karlene who was eight months pregnant with their daughter, Jasmine. He covered his fist with a T-shirt and repeatedly struck her in the face and abdomen. Due to the assault, Karlene's uterus ruptured and expelled Jasmine into the abdominal cavity, killing Jasmine.

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.

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. Unfortunately, the criminal has not been apprehended.

¹⁸Two years ago, 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.

Crime Victims

Crime victims who are attacked because they were a victim of a prior crime deserve special protection as well. The Judiciary Committee considered this bill during the 2007 National Crime Victims' Rights Week. In honor of every victim, we should renew our commitment to protecting crime victims from violent acts whether carried out to intimidate or silence them as a witness, or for any other motivation because of their status as a victim.

Witness Protection

Witnesses in the judicial system, who are targeted because they are a witness, deserve special protection under the hate crimes bill. Recently, the Crime Subcommittee held a hearing to examine the problem of victim and witness intimidation and the need for witness protection services at the state and local level. Witness protection services are very expensive. One easy way to reduce that cost is to deter the crime—make it a hate crime when a criminal attacks someone because of his or her status as a witness in a judicial proceeding.

A Justice Department study in the 1990s concluded that “witness intimidation is a pervasive and insidious problem. No part of the country is spared and no witness can feel entirely free or safe.” Prosecutors interviewed in this study estimated that witness intimidation occurs in 75 percent to 100 percent of the violent crimes committed in some gang-dominated neighborhoods.

Prosecutors in Baltimore estimate that 35 percent to 50 percent of non-fatal shooting cases in the city cannot proceed because of reluctant witnesses, and about 90 percent of all homicide cases involve some manner of witness intimidation.

CONCLUSION

As outlined above, H.R. 1592 suffers from numerous problems. The majority's rush to judgment ensures that, even if enacted, the hate crimes statute will be overturned by the courts. That will undermine its stated goal of assisting state and local law enforcement to reduce bias-motivated violence.

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