

**Testimony of Utah Attorney General Mark L. Shurtleff
Before the Subcommittee on Crime, Terrorism, and Homeland Security,
Committee on the Judiciary,
United States House of Representatives**

H.R. 1592 – “Local Law Enforcement Hate Crimes Prevention Act of 2007”

Chairman Conyers and Members of the Committee:

My name is Mark Shurtleff, and I am the Attorney General of the State of Utah. Thank you for the opportunity to speak in support of H.R. 1592 – Local Law Enforcement Hate Crimes Prevention Act of 2007 (LLEHCPA). For the second year now, the Attorney General of Illinois, Lisa Madigan, and I have co-authored a bi-partisan letter signed by approximately half of state attorneys general communicating our strong support of Congressional efforts towards the immediate passage of federal hate crimes legislation.

As the chief legal officers in our respective jurisdictions, State Attorneys General are on the front lines in the fight to protect our citizens' civil rights. Although state and local governments continue to have the primary responsibility for enforcing criminal law, we believe that federal assistance is critical in fighting the invidious effects of hate crimes.

This much-needed legislation would remove unnecessary jurisdictional barriers to permit the United States Department of Justice to prosecute violent acts motivated by bias and hate and to enhance existing federal law by providing new authority for crimes where the victim is intentionally selected because of his or her gender, gender identity, sexual orientation, or disability. Under current law, the Justice Department can only prosecute crimes motivated by the victim's race, religion, or national origin when that person is engaged in a federally protected activity, such as voting. Legislative proposals, such as the LLEHCPA, however, would permit federal prosecution of hate crimes irrespective of whether they were committed while the victim was engaged in protective activities.

Removing this outmoded jurisdictional barrier to federal prosecution of hate crimes is critical to protecting our citizens' fundamental civil rights. In 2005, the most recent figures available, the FBI documented 7,163 incidents resulting in 8,795 crimes reported by 12,417 law-enforcement agencies across the country. However, I want to emphasize that it is not the frequency or number of hate crimes, alone, that distinguish these acts of violence from other crimes. Rather, our experiences as prosecutors have shown us that these crimes can have a special impact on victims, their families, their communities and, in some instances, the nation. Indeed, in *Wisconsin v. Mitchell*, 508 U.S. 47 (1993), Chief Justice William Rehnquist wrote for a unanimous Supreme Court upholding the constitutionality of enhanced penalties for crimes motivated by bias or hate against a person because of race, religion, color, disability, sexual orientation, national origin or ancestry. In so ruling, the court recognized that "bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest." Hate crimes have led to the polarization of communities, increases in security needs at schools and churches, declines in property values and the creation of

an overall atmosphere of fear and distrust. All too often that climate has hindered the efforts of local law enforcement and placed the lives of police officers and civilians in jeopardy.

The need for comprehensive and effective hate crimes legislation is a matter of public safety and security as a critical tool in allowing law enforcement to protect all people equally. Opponents argue incorrectly that H.R. 1592 will make hatred a crime, will punish thought, will create special protected classes of people, or is part of a “militant gay rights agenda.” As Utah Attorney General, I worked for six years with both sides of the isle and with representatives of all races, religions, and sexual orientations, to pass an enforceable hate crimes law in Utah. We faced each of those false allegations. To assist our legislature and the public in understanding the truth about hate crimes legislation, and in recognition that an important part of the legislative process is one of education, I prepared and distributed a document in the format of a school “primer” organized by subject. I offer here an edited version of that primer in the hopes it will prove helpful in your deliberations and decision making with regard to this important bill.

“WE HOLD THESE TRUTHS . . .”

A “HATE CRIMES” PRIMER

By Utah Attorney General Mark L. Shurtleff

Chapter I. Current Events (*The Worst “Hate Crime” in U.S. History*)

There were more victims on September 11, 2001 than the three thousand souls who perished that day. Every American felt victimized by the hatred those terrorist criminals had for our national identity. We all asked, “Why do they hate us so?” And when they acted on that hate, we all felt fear, and our economy suffered terribly. Our fear naturally turned to anger and a lust for revenge. The perpetrators that day targeted not the individuals on the planes and in the Twin Towers, but rather who they were – Americans. In the same way, every bias motivated crime is targeted at a larger audience than the individual victim. Because an entire group of people is victimized by hate crimes, and the widespread negative results of such crimes, H.R. 1592 provides a tool to more effectively and more severely punish the perpetrators.

Chapter II. History (*“We Hold These Truths to be Self-Evident. . .”*)

America’s founding fathers, and the inspirational documents they crafted, are sometimes incorrectly cited in opposition to “hate crimes” legislation. The birth of our Republic arose out of a truly “revolutionary” concept. After more than a century of monarchial and aristocratic rule, the founding fathers reasoned that it was “self-evident” that human rights, like life, liberty and the pursuit of happiness, were not the benevolent right of kings, but inalienable, and given by God to all men equally; and that government was instituted solely to secure or protect those rights.

Those great leaders changed the history of the world for the better and established a system of government ruled by law that has stood the test of time and guaranteed

unbelievable freedoms and opportunities. However, many of them went to their graves regretting that they could do no more than give mere lip service to the first self-evident truth that “all men are created equal.” The Declaration of Independence was fueled by the conviction that the ensuing Revolution would sweep slavery off the American continent. Although slavery was decried as “an odious bargain with sin,” a “curse,” a “crime,” and was anathema to republican ideology; in the end the self-evident truth of **equality** remained the self-evident reality of **slavery**. It would take “four score and seven years” for a leader with the courage to match his convictions, Abraham Lincoln, to actually breath life and truth into the proposition that all men are created equal, and end the odious “hate crime” of slavery.

Another hundred years passed before courageous statesmen would put principal above politics and the force of law behind the promise of equality. Today, eleven score and eleven years after the inspired declaration of truth, hate remains strong, and some Americans continue to commit crimes motivated by bias and prejudice against individuals which impact entire communities, and which are, therefore, anathema to the concept that all men are created equal. It behooves us who govern by the consent of the people to rise to the occasion and pass H.R. 1592 to better protect the people from those who thumb their noses at those self-evident truths of equality in life, in liberty and in the pursuit of happiness.

Chapter III. Politics (*The Proper Role of Government*)

Having won their independence, the people of the United States set about the task of forming “a more perfect Union,” by establishing a Constitution that would, first and foremost, “establish justice [and] ensure domestic tranquility.” Justice means equality under the law and refers to the paramount obligation of the courts to ensure that all persons are treated fairly. Domestic tranquility equates to public safety. Thomas Jefferson declared that “a wise and frugal government . . . shall restrain men from injuring one another.” In the pamphlet entitled *The Proper Role of Government*, former U.S. Secretary of Agriculture Ezra Taft Benson, stated that “government becomes primarily a mechanism for defense against bodily harm, theft and involuntary servitude,” and that it is proper for government to deprive one of life, liberty, or property to only “punish crime and provide for the administration of justice.” H.R. 1592 provides a needed tool to establish justice, better restrain and punish criminals, and defend and protect all Americans.

Chapter IV. English (*The Correct Definition of “Hate Crimes”*)

Let’s get back to the basics: “hate crimes” is a misnomer. Laws like H.R. 1592 do not create any new crimes. They do not punish people for hating. They simply provide a tool to the judicial system to enhance or increase the penalty if the trier of fact determines beyond a reasonable doubt that a crime was committed against the victim primarily because of actual bias or prejudice against a group to which that victim belongs. The prosecution must prove that the defendant demonstrated the bias or prejudice at the time the crime was committed. It must show more than just evidence of an abstract belief,

membership in an organization, or expressions of hatred. That evidence must be “specifically related” to the offense.

Chapter V. Math (*Worse Crime = More Time*)

One of the common fallacies used against hate crimes laws is that they aren’t needed because “all crimes are hate crimes.” In fact, most crimes are not motivated by hate, bias or prejudice. Many crimes are motivated by greed, some by anger, and others by a brief, overwhelming passion. And the truth of the matter is that now, and for hundreds of years in our system criminal jurisprudence and thought, we have applied different degrees of punishment for the same crime depending on different motives. So-called hate crime laws simply add a motive of bias or prejudice to that system.

In unanimously upholding the constitutionality of hate crime laws, the United States Supreme Court cited 18th Century jurist William Blackstone’s Commentaries: “It is but reasonable that among crimes of different natures those should be most severely punished which are the most destructive of the public safety and happiness.” Wisconsin v. Mitchell, 113 S.Ct. 2194, 2201 (1993). Blackstone was right, and the courts have long recognized that crimes motivated by bias or prejudice against a group is most destructive of public safety and the pursuit of happiness.

Blackstone’s writings played an important role in the founding of our nation. Some authors have noted that the "self-evident," "unalienable rights" in the Declaration of Independence probably came from Blackstone's writings and that the founders “found their philosophy in John Locke and their passion in Thomas Paine, but they found the blueprint for a new nation in Blackstone.” Abraham Lincoln said that he decided to become a lawyer after reading the first forty pages of Blackstone’s Commentaries and often referred people to read it, “twice,” as "the best mode of obtaining a thorough knowledge of the law."

Like the heinous acts of September 11th, bias-motivated crimes “inflict greater individual and societal harm . . . [and] are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.” So stated “conservative” Chief Justice William Rehnquist in writing the unanimous decision in Wisconsin v. Mitchell, *id.*

Chapter VI. Law (*“Hate Crimes” Legislation is Constitutional*)

A. Equal Protection

Some people oppose laws like H.R. 1592 because they wrongly believe that they create special rights for special groups thereby violating the equal protection clause and the “all men are created equal” declaration. The truth is that hate crimes laws have never been written nor enforced to protect just “Blacks,” “Jews,” or “homosexuals.” They apply equally across the board to everyone because we all belong to protected groups: “race, color, religion, sexual orientation, national origin, ancestry, age, or gender.” Some

opponents of these laws claim the enhanced penalty will only be used to protect minorities and that a “white male Protestant” will not be protected. The claim has no basis in the law or in fact. Of the 4,895 crimes reported in 2005 as racially-motivated, 19.9 percent were anti-white. Of the 1,405 religiously motivated crimes, 8.4% were against Christians. In fact, in Wisconsin v. Mitchell, the defendant, a black man, received a stiffer sentence for committing a “hate crime” against a white man.

B. Free Speech

Hate crimes laws like H.R. 1592 do not punish bigoted thought! It does not punish speech or expression! “Hate crimes” are not “thought crimes!” H.R. 1592 only punishes affirmative criminal conduct. It has been repeatedly held that “the First Amendment does not protect violence.” (See e.g. NAACP v. Claiborne Hardware Co., 102 S.Ct. 3409, 3427 (1982.)) Again, the motive or the thoughts of an alleged criminal have long been ruled admissible for sentencing purposes. Citing several cases, the Supreme Court in Wisconsin v. Mitchell, *supra*, at 2199, explained that “it is not uncommon for a defendant to receive a minimum sentence because he was acting with good motives, or a rather high sentence because of his bad motives . . . Thus, in many States the commission of a murder . . . for pecuniary gain is a separate aggravating circumstance.”

1. “A Black Face in a White Place.”

Sadly there is still plenty of hate in our nation. I heard a man on a Utah radio station declare that former state representative Duane Bordeaux, who is African-American, was “a black face in a white place and we don’t want his kind here!” While that attitude disgusts me, and most Utahns, I will defend that man’s constitutional right to hate and even to express that hatred on the radio. But if he were to come to the Capitol and push Representative Bordeaux over the balcony, and I could prove beyond a reasonable doubt to a jury that he did it because of prejudice against his race, I would like the tool to keep that man locked up away from our good citizens for a longer period of time. For purposes of H.R. 1592, I would like the opportunity to staff that case with my federal counterparts and determine which system offered the most effective punishments.

2. “Remember to Have Them Castrated.”

Not long after September 11, I warned a national airline that it could not discriminate based on the appearance of “Arab-looking men” and refuse to let them fly. A Utah woman who claimed to have a degree from one of our universities wrote me in anger. “I know Arabs,” she claimed. “They are not to be trusted! They will kill you . . . They are devils and black Satanists . . . They have ripped off good people . . . I have a right to live Muslim free . . . send them back to that black place [Middle East] . . . but first remember to have them castrated so they can’t spread their hate to another generation.” Again, while I am saddened and disturbed by her hatred, she has a right to send me an email expressing it. But if she were to take up a knife and carry out her plan on a Muslim, and I could prove in court that she committed a violent assault because of

her prejudice, then I would need the tool to keep her away longer from the communities she harmed, and other peaceful law-abiding citizens.

Chapter VII. Ethics (Why Include Sexual Orientation?)

Many people have asked me why, given my Republican political philosophy and religious beliefs, I could support including a “protection for sexual orientation.” They claim that supporters of hate crimes laws that include sexual orientation as a protected category are motivated by the “militant gay rights movement,” and this is just a step in their “plan” to obtain special rights or status. H.R. 1592 does not create any legal right or status based on sexual orientation, and it does not address the controversial issue of whether homosexuality is a “choice.” It doesn’t have to. It simply says that it is never okay to assault a gay or lesbian because they are homosexual. It seems we could all agree to that.

I believe the vast majority of Americans stand for tolerance, acceptance and love, and that regardless of whether one believes that homosexuality is a choice, a biological predisposition, or a “sin,” it would be a moral outrage to send a message that it is okay to assault or commit other crimes against homosexuals. Failing to include sexual orientation in the federal list of categories would send that awful message.

Those who argue most loudly against including sexual orientation, have alleged that most “hate crimes” charged are for anti-gay crimes. That is also incorrect. Of the 8,850 bias motivated offenses reported in 2005, 69.7% were motivated by racial, ethnic or national origin bias. 15.7% were motivated by religious prejudice; and 14% by sexual-orientation bias. Of the latter there were twenty reported cases of anti-heterosexual bias.

Epilogue

As the chief legal and law enforcement officers of our respective states, we are mindful that the overwhelming majority of criminal cases should be brought by local police and prosecutors at the state level. However, in those rare situations in which local authorities are unable to act, measures such as the LLEHCPA provide a backstop to state and local law enforcement by allowing federal involvement if it is necessary to provide a just result. These measures would provide invaluable tools to federal law enforcement to help state authorities in their fight against hate crimes. Therefore, we strongly urge the passage of important hate crimes legislation by the 110th Congress.