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Hentoff: 'Thought crimes' bill advances

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GHS

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Why is the press remaining mostly silent about the so-called "hate crimes law" that passed in the House on April 29? The Local Law Enforcement Hate Crimes Prevention Act passed in a 249-175 vote (17 Republicans joined with 231 Democrats). These Democrats should have been tested on their knowledge of the First Amendment, equal protection of the laws (14th Amendment), and the prohibition of double jeopardy (no American can be prosecuted twice for the same crime or offense). If they had been, they would have known that this proposal, now headed for a Senate vote, violates all these constitutional provisions.

This bill would make it a federal crime to willfully cause bodily injury (or try to) because of the victim's actual or perceived "race, color, religion, national origin, gender, sexual orientation, gender identity or disability" - as explained on the White House Web site, signaling the president's approval. A defendant convicted on these grounds would be charged with a "hate crime" in addition to the original crime, and would get extra prison time.

The extra punishment applies only to these "protected classes." As Denver criminal defense lawyer Robert J Corry Jr. asked (Denver Post April 28): "Isn't every criminal act that harms another person a 'hate crime'? Then, regarding a Colorado "hate crime" law, one of 45 such state laws, Corry wrote: "When a Colorado gang engaged in an initiation ritual of specifically seeking out a "white woman" to rape, the Boulder prosecutor declined to pursue 'hate crime' charges." She was not enough of one of its protected classes.

Corey adds that the state "hate crime" law - like the newly expanded House of Representatives federal bill - "does not apply equally" (as the 14th Amendment requires), essentially instead "criminalizing only politically incorrect thoughts directed against politically incorrect victim categories."

Whether you're a Republican or Democrat, think hard about what Corry adds: "A government powerful enough to pick and choose which thoughts to prosecute is a government too powerful."

But James Madison, who initially introduced the First Amendment to the Constitution, had previously written to Thomas Jefferson on the passage of the Virginia Statute on Religious Freedom: "We have in this country extinguished forever ... making laws for the human mind." No American, he emphasized later, would be punished for his "thoughts."

However, doesn't the House "Hate Crimes Bill" state that nothing in the legislation shall "prohibit any expressive conduct protected from legal prohibition" - or speech "protected by the free speech or free exercise clauses in the First Amendment"?

Remember, however, as Kathleen Gilbert notes (LifeSiteNews.com) that "free speech advocates have pointed out that under current U.S. law, any action that 'abets, counsels, commands (or) induces a perceived 'hate crime' shares in the guilt of that crime and is therefore punishable."

But doesn't this new bill slip in an insistence that "evidence or expression or association of the defendant may not be introduced as evidence at trial unless the evidence specifically relates to that offense"?

In the definitive constitutional analysis of James B. Jacobs and researcher Kimberly Potter (Oxford University Press 1998, still in print), it is documented in "Hate Crimes: Criminal Law and Identity Politics" that "In Grimm v. Churchill the arresting officer was permitted to testify that the defendant had a history of making racial remarks. Similarly, in People v. Lampkin, the prosecution presented as evidence racist statements the defendant had uttered six years before the crime for which he was on trial," as specifically relating to the offense.

As for the 14th Amendment's essential requirement that no person be denied "the equal protection of the laws," there is carved above the entrance to the Supreme Court: "Equal Justice Under Law."

This legislation, certain to be passed by the Senate, will come to the Supreme Court. I hope the Justices will look up at the carving as they go into the building.

They should also remember that the Fifth Amendment makes clear: "nor shall any person be subject for the same offence to be twice put in jeopardy." But the House "hate crime" bill allows defendants found innocent of that offense in a state court to be tried again in federal court because of insufficiently diligent prosecutors; or, as Attorney General Eric Holder says, when state prosecutors claim lack of evidence. It must be tried again in federal court!

Imagine Holder as the state prosecutor in the long early stages of the Duke University Lacrosse rape case!

What also appalls me, as the new federal bill races toward a presidential signature, is that for years, and now, the American Civil Liberties Union approves "hate crimes" prosecutions!

I have long depended on the ACLU's staff of constitutional warriors to act persistently against government abuses of our founding documents. And

these attorneys and analysts have been especially valuable in exposing the results of executive-branch lunges against the separation of powers in the Bush-Cheney years, and still under Obama.

Is there no non-politically correct ACLU lawyer or other staff worker or anyone in the ACLU affiliates around the country or any dues-paying member outraged enough to demand of the ACLU's ruling circle to at last disavow this corruption of the Constitution?

And the president, former senior lecturer in that document at the University of Chicago, should at least take it with him on Air Force One, where there are fewer necessary distractions, and familiarize himself with what the Constitution actually says.

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