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Obama signs bill expanding hate crimes to sexual orientation

Gay-rights groups welcomed the move, which expands hate-crime law to include crimes based on gender and sexual orientation. But some legal scholars suggest it's an overreach of federal power.

By **Linda Feldmann** | Staff writer/ October 28, 2009 edition

WASHINGTON

The gay community applauded President Obama's signing Wednesday of a hate-crime law that covers crimes against people based on their gender identity and sexual orientation, real or perceived.

The law, known as the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, gives the Justice Department the ability to investigate and prosecute such crimes. It expands on a 1969 federal hate-crimes law that covered crimes motivated by race, color, religion, national origin, and disability.

"Certainly, this is a really important first step," says Kevin Cathcart, executive director of Lambda Legal gay rights organization. "It is something that we have needed and wanted for many years. It's a day that deserves celebration."

But he and other gay-rights activists say that much remains on the agenda for federal action:

- **Passage of the Employment Non-Discrimination Act (ENDA).** This legislation would bar employment discrimination based on sexual orientation and gender identity. Some states have such a law on the books, but many do not.
- **Repeal of the Defense of Marriage Act (DOMA):** This 1996 law defines marriage as between one man and one woman, and allows states not to recognize a same-sex marriage performed elsewhere.
- **Repeal of "don't ask, don't tell" (DADT):** This 1993 policy bars gays from serving openly in the military.

The gay community has expressed disappointment with Mr. Obama for not following through as speedily as they hoped with action on these issues. In a speech earlier this month to Human Rights Campaign, the nation's largest gay-rights organization, Obama promised to lift DADT, but gave no time frame.

Activists have also been disappointed that Obama has not spoken out on behalf of gay rights in Maine and Washington State, as voters head to the polls Nov. 3. In Maine, a referendum seeks to overturn a law allowing gay marriage. In Washington, a referendum would reverse a new domestic partnership law.

The new hate-crimes law is named for two victims of hate crimes. Matthew Shepard was a college student in Wyoming when he was tortured and killed in 1998. Witnesses say he was targeted for being gay. James Byrd Jr. of Texas, an African American, died while being dragged behind a truck. At the time, there were no state laws on the books regarding hate crimes in Texas.

Some legal scholars argue that the new measure represents an unconstitutional overreach of federal power.

Tim Lynch, director of the Project on Criminal Justice at the libertarian Cato Institute, notes that in 2000, the Supreme Court struck down parts of the Violence Against Women Act as an overstep of congressional authority under the Commerce Clause.

“The new hate-crime law will be invalidated for similar reasons,” Mr. Lynch writes in a statement. “In the meantime, the law will not prevent any violent crime from happening.”

He adds that hate-crime laws “take the government too close to the notion of ‘thought crimes,’ because investigators will now have to dig into peoples’ lives in order to gather ‘evidence’ to prove the bias element in a court of law.”

Gay-rights activists reject the thought-crime argument.

“Motive has been a part of prosecution of crimes for a very long time,” says Rick Rosendall, vice president for political affairs of the Gay and Lesbian Activists Alliance in Washington. “There’s not hate crime absent a crime.”

Besides, he adds, “opponents would have more credibility if they had objected to hate-crimes laws in the first place.”

Obama signed the new hate-crimes law in conjunction with the 2010 Defense Authorization Act. Later in the day, the president will host a reception in the East Room of the White House and deliver remarks commemorating the enactment of the hate-crimes law.

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