



# Leadership Conference on Civil Rights

**1629 K Street, NW  
10th Floor  
Washington, D.C. 20006**  
**Phone: 202-466-3311**  
**Fax: 202-466-3435**  
**[www.civilrights.org](http://www.civilrights.org)**

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Wade J. Henderson

July 20, 2009

Dear Senator:

On behalf of the civil rights, religious, professional, civic, and educational groups below, we write to urge you to oppose two unnecessary and harmful amendments offered by Senator Sessions to S. 1390, the FY 2010 Department of Defense Authorization bill.

As strong supporters of S. 909, the Matthew Shepard Hate Crimes Prevention Act (HCPA), we supported the addition of this legislation as an amendment to S. 1390 last week. At a time when Congress is poised to advance civil rights protection by promoting new Federal-state partnerships and providing new tools to address bias-motivated violence, the proposed amendments by Senator Sessions (a staunch opponent of the HCPA) would be a disturbing step backward – and raise the prospects of unequal, politically-motivated, shifting standards of justice in applying the new hate crime law in the future.

One amendment offered by Senator Sessions, S.Amdt. 1615, would add the death penalty to the provisions of the HCPA. We strongly oppose this amendment.

The HCPA was first introduced in 1997, but no version of the bill has ever included the death penalty. Senate and House sponsors of the bill and the very broad coalition of supporters have always opposed adding the death penalty to this legislation. The House of Representatives approved its very similar version of this measure, HR 1913, the Local Law Enforcement Hate Crime Prevention Act, without the death penalty on April 29 by a vote of 249-175. An amendment to add the death penalty was defeated at the House Judiciary Committee markup.

Supporters of the HCPA should oppose this amendment. The death penalty is irreversible and highly controversial – with significant doubts about its deterrent effect and clear evidence of disproportionate application against poor people. Moreover, there are serious, well-documented concerns about unequal and racially biased application of the death penalty. According to the Justice Department's Bureau of Justice Statistics, since 1977, blacks and whites have been the victims of murders in almost equal numbers, yet 80% of the people executed in that period were convicted of murders involving white victims.

Importantly, the vast majority of hate crimes are prosecuted by state and local officials. Failure to include the death penalty in the HCPA, which will be codified at 18 U.S.C. §249, will not impact state action. States with the death penalty are free to pursue that option.

We also urge you to oppose another amendment, SA 1617, offered by Senator Sessions. This amendment would require the Attorney General to promulgate guidelines with

“neutral and objective criteria for determining whether a crime was motivated by the status of the victim.” This amendment is unnecessary and injects politics into the Justice Department decision-making process in these cases. Senators should be especially concerned that this additional Attorney General guidance could vary from Administration to Administration, resulting in uncertainty and, at worst, an unequal application of this important law.

Moreover, the amendment is redundant. The HCPA already requires the Attorney General to certify that a crime meets the requirement of the statute before initiating any prosecution:

- (A) the State does not have jurisdiction;
- (B) the State has requested that the Federal Government assume jurisdiction;
- (C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or
- (D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

This language tracks the very similar certification requirement from an existing statute, 18 U.S.C. § 245. FBI investigators and Justice Department prosecutors have had forty years of experience under this parallel statute to develop well-established procedures governing the conduct of prosecutors – and for determining whether a case is bias-motivated and whether the Justice Department has jurisdiction to pursue it. There is no record of abuse by the Justice Department in selective prosecutions or in using its authority capriciously or arbitrarily. Therefore, there is no need to burden these prosecutions with another layer of guidance and another procedural obstacle.

The time for action to update and expand federal hate crime law is now. These amendments offered by Senator Sessions are unnecessary and harmful and we urge you to oppose them.

Please contact Michael Lieberman, Anti-Defamation League Director, Civil Rights Policy Planning Center, at (202) 261-4607 or [mlieberman@adl.org](mailto:mlieberman@adl.org), or Nancy Zirkin, LCCR Executive Vice President at (202) 263-2880 or [Zirkin@civilrights.org](mailto:Zirkin@civilrights.org) with any questions. Thank you in advance for your support.

Sincerely,

Anti-Defamation League  
Human Rights Campaign  
Leadership Conference on Civil Rights  
National Council of Jewish Women  
American Association of People with Disabilities  
American Association of University Women (AAUW)  
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)  
American Federation of Teachers  
American Jewish Committee  
Amputee Coalition of America

Asian American Justice Center  
Association of University Centers on Disability  
Bazelon Center for Mental Health Law  
B'nai B'rith International  
DignityUSA  
Disability Rights Education and Defense Fund  
Family Equality Council  
GLSEN - The Gay, Lesbian and Straight Education Network  
Helen Keller National Center National Coalition on Deaf-Blindness  
Hindu American Foundation  
Human Rights Campaign  
Human Rights First  
Jewish Council for Public Affairs  
Legal Momentum  
NAACP  
NA'AMUT USA  
National Advocacy Center of the Sisters of the Good Shepherd  
National Center for Transgender Equality  
National Coalition for the Homeless  
National Coalition on Deaf-Blindness  
National Coalition to Abolish the Death Penalty  
National Congress of Black Women  
National Council of La Raza  
National Disability Rights Network  
National Gay and Lesbian Task Force Action Fund  
National Urban League  
Orthodox Church in America  
Parents, Families and Friends of Lesbians and Gays (PFLAG) National  
People for the American Way  
Religious Institute  
School Social Work Association of America  
Sikh American Legal Defense and Education Fund  
The American-Arab Anti-Discrimination Committee (ADC)  
Union for Reform Judaism  
Unitarian Universalist Association of Congregations  
United Methodist Church, General Board of Church and Society  
Women of Reform Judaism  
YWCA USA