

**Statement of Scott Levin, Mountain States Regional Director
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For the
Wyoming Advisory Committee to the U.S. Commission on Civil Rights
Hate Crimes in Wyoming
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The US Commission on Civil Rights Addressing Hate Crimes in Wyoming

For more than 30 years, the U.S. Commission on Civil Rights and its State Advisory Committees have done trailblazing work elevating the issue of hate crimes and bias-motivated violence. We appreciate the fact that the Commission has again turned its attention to this national problem and very much hope that the findings and recommendations that emerge from this briefing will address a broad range of issues, including the current climate on emboldened hate, the necessity for comprehensive and inclusive hate crime laws and the insufficiency of current hate crime protections in Wyoming.

Anti-Defamation League (“ADL”)

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment for all." Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, as well as defending democratic ideals and promoting civil rights, ADL is proud of its leadership role in developing innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

ADL is the nation's leader in the development of effective programs to confront anti-Semitism, violent bigotry, and prejudice. The League's strength is its ability to craft national programming and policy initiatives and then to refine and implement them through our network of 26 regional offices spread throughout the country. Our national headquarters in New York houses extensive research archives and staff members with professional expertise in legal affairs, extremism, international relations, and education.

Over the past three decades, ADL has been recognized as a leading expert on effective responses to bias-motivated crime. In 1981, ADL drafted a model hate crime law, upon which many states' hate crime laws are based. For thirteen years, we were privileged to lead a broad coalition of civil rights, religious, educational, professional, law enforcement, and civic organizations that helped secure enactment of the federal Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act in 2009. ADL's work to fight violent bigotry takes place in many arenas: in the legislature, in the halls of justice, and through education programs geared toward law enforcement officers and the public.

The Impact of Bias-Motivated Crime

All Americans have a stake in effective response to violent bigotry. These crimes demand priority attention because of their special impact. Hate crimes are uniquely harmful. When a person is targeted for a crime because of an immutable characteristic – whether it is race, color, religion, national origin, ethnicity, sex, ancestry, sexual orientation, gender identity, or disability – it does not just injure that person. It harms the entire community of people who share that characteristic, and the community at large, and it sends the message that they are not welcome, that they are not safe. Bias-motivated crimes are designed to intimidate the victim and members of the victim's community, leaving them feeling fearful, isolated, vulnerable, and unprotected by the law. Failure to address this unique type of crime can cause an isolated incident to explode into widespread community tension. The damage done by hate crimes, therefore, cannot be measured solely in terms of physical injury or dollars and cents. By making members of targeted communities fearful, angry, and suspicious of other groups – and of the power structure that is supposed to protect them – these incidents can damage the fabric of our society and fragment communities. Because hate crimes cause unique dangers and harms, they require unique tools to address, combat, and prevent them.

FBI Hate Crime Statistics Act

The FBI has been tracking and documenting hate crimes reported from federal, state, and local law enforcement officials since 1991 pursuant to the Hate Crime Statistics Act of 1990 (“HCSA”). Though clearly incomplete, the FBI’s annual HCSA Reports provide the best single national snapshot of bias-motivated criminal activity in the United States.

The 2017 FBI HCSA Report documented a **17% overall annual increase** in hate crimes on the basis of race, ethnicity, ancestry, religion, sexual orientation, disability, gender, or gender identity.¹ This is on the heels of 2016’s **5% overall annual increase**.² Specifically, in 2017, the FBI documented 7,175 hate crimes reported by 16,149 law enforcement agencies across the country. Of the 7,175 total incidents, 4,131 were motivated by race/ethnicity/ancestry bias (58%), 1,564 were motivated by religious bias (22%), 1,130 were motivated by sexual orientation bias (16%), 116 were motivated by disability bias (2%), and 119 were motivated by gender identity bias (2%).³

The 1,564 religion-based hate crimes recorded in 2017 marked a 23% increase relative to 2016, and the second highest number of religion-based crimes ever recorded. As has happened every year since 1990, a disturbingly high and disproportionate percentage of the total number of reported religion-based crimes (60%) was directed against Jews and Jewish institutions. Reported hate crimes against Muslims also remained historically high; the 273 anti-Muslim hate crimes recorded in 2017 was the third highest number ever recorded.⁴ There were also significant

¹ <https://ucr.fbi.gov/hate-crime/2017>.

² <https://ucr.fbi.gov/hate-crime/2016>.

³ <https://www.adl.org/media/12149/download>.

⁴ <https://www.adl.org/media/12149/download>.

increases in the number of hate crimes directed against Arab Americans (100%), Asian-Pacific Americans (20%), Native Americans (63%), and Latinos (24%) in 2017.⁵

A brief breakdown of what the HCSA report demonstrates:

- Race was and has been the most frequent basis of hate crimes over the past 25 years. In 2017, Race was the basis of 4,131 incidents (more than 58% of the total). Crimes against African-Americans made up the vast majority of that category, with 2,013 incidents.
- Crimes directed against individuals and institutions on the basis of religion were the second most frequent (1,564 crimes, representing over 21%) hate crimes category. Crimes against Jews and Jewish institutions increased 37%, accounting for almost 60% of the crimes targeting religion category. Although there was actually a small increase in anti-Muslim hate crimes reported- from 307 in 2016 to 273 in 2017- the number documented by the FBI was still the third highest number of such crimes since the FBI began collecting the data.
- In addition, 1,130 (16%) of the hate crime victims were targeted because of their sexual orientation and 119 (almost 2%) were targeted because of their gender identity.

In Wyoming, of 57 agencies participating in the FBI Uniform Crime Reporting Hate Crimes Statistics Program in 2017, only three agencies submitted incident reports, reporting four bias motivated offenses for the year. Two of the criminal offenses reported in 2017 were motivated by sexual orientation, one by religion and one by race/ethnicity/ancestry bias, which took place at the University of Wyoming. In 2016, the FBI reported on three reports and, in 2015, only two.

Data drives policy. The HCSA has proven to be a powerful mechanism to confront violent bigotry, increasing public awareness of the problem and sparking improvements in the local response of the criminal justice system to hate violence- since in order to effectively report hate crimes, police officials must be trained to identify and respond to them.

It is important to note that while the HCSA has provided one of the best national snapshots of bias-motivated criminal activity in the United States since 1991, it is clearly incomplete. Experts widely agree that the numbers are significantly understated due to underreporting on two levels. Many hate crimes never get reported to law enforcement. A variety of factors may cause victims not to report, including fear of reprisal, lack of awareness of what constitutes a hate crime, language and cultural barriers, fear of the police, fear by immigrants of deportation, fear by LGBTQ individuals of being subjected to discrimination or hostility, fear by others in already marginalized or targeted communities of being subjected to the same, etc. These are just a handful of the many barriers to reporting for community members. In fact, studies by the National Organization of Black Law Enforcement Executives (NOBLE) and others have revealed that some of the most likely targets of hate violence are the *least* likely to report these crimes to the police.

⁵ <https://www.adl.org/news/press-releases/adl-calls-on-leaders-to-redouble-efforts-to-counter-hate-after-fbi-reports-hate>.

Even when hate crimes are reported to law enforcement, law enforcement may not report to the FBI. Under the HCSA, reporting is not mandatory, and many law enforcement agencies do not participate. Together, we need to work to address and reduce both levels of underreporting.

To the extent that states and cities are reporting credible hate crime data, the HCSA report provides a measure of accountability for states and cities and a revealing look into their ability and readiness to address hate crime. A large city, or a state, that does not report hate crimes to the FBI – or affirmatively reports zero hate crimes – does not inspire confidence that they are ready and able to address hate violence.

Extremists and Hate Groups Emboldened

Although incidents of right-wing extremist activity in Wyoming are disturbing, there are a relatively small number in the state likely due to the state's small population scattered over a very large area. As a result, extremists find it difficult to get enough people together to sustain organized group activities. In recent years, Wyoming has had only a single white supremacist group with any notable amount of activity. In 2017, a small chapter of Identity Evropa, a white supremacist group, formed with a handful of individuals and began putting up fliers primarily on college campuses. When Identity Evropa's leader ended that group and started the American Identity Movement, most of those participating in Identity Evropa migrated to the new organization. Undoubtedly, there are also individual members of other white supremacist groups, as well as white supremacists around the state who belong to no organized group at all. ADL has also noted a few members of the Colorado-based 211 Crew in Wyoming (a white supremacist prison gang whose former leader, Benjamin Davis, committed suicide in a Wyoming prison in 2017).

ADL experts in its Center on Extremism have created a tool to report on hate, extremism, anti-Semitism and terrorism that we call our H.E.A.T. Map, which can be found at <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map>. This unique visualization is comprised of data points extracted from information sources including news and media reports, government documents (including police reports), victim reports, extremist-related sources, Center on Extremism investigations and more. In reviewing this accumulation of incidents between 2017 and 2019, ADL recorded for Wyoming two white supremacist events, 26 distributions of white supremacist distributions and three anti-Semitic incidents.

Much of the white supremacist propaganda distributed in Wyoming has been from Identity Evropa and its successor, American Identity Movement. These white supremacist groups claim to be focused on the preservation of "white American culture" and the promotion of "white European identity." Their slogan, "You will not replace us," reflects a belief that unless immediate action is taken, the white race is doomed to extinction by an alleged "rising tide of color" purportedly controlled and manipulated by Jews.

Incidents were recorded by ADL in Casper, Cheyenne, Gillette, Green River, Laramie, Powell, Riverton, Rock Springs and Sheridan, Wyoming. Here is a sampling of the incidents recorded by ADL over the past couple of years:

- 02/2017 The National Association of Forensic Historian (a neo -Nazi group) posted flyers at the University of Wyoming in Laramie reading, “Offer of \$75,000 reward for archaeologist to find proof Holocaust occurred.”
- 11/2017 Holocaust denial flyers posted on the University of Wyoming in Laramie campus.
- 02/2018 Identity Evropa posted flyers at the University of Wyoming in Laramie reading, “Our Generation. Our Future. Our Last Chance.”
- 06/2018 Identity Evoropa put cards in books at the Sweetwater County Library in Green River with its slogans.
- 11/2018 Identity Evoropa distributed fliers in Green River that read, “European roots, American greatness.”
- 1/2019 Approximately five individuals associate with Identity Evoropa held a flash demonstration in Cheyenne holding a banner that read, “Defend the Rockies End Immigration.”
- 3/2019 An unknown person distributed propaganda at McCormick Junior High in Cheyenne stating, “It’s great to be straight, it’s not OK to be gay,” “black lives only matter because if it weren’t for them, who would pick our cotton?” and “Join the KKK” with “the confederate kid club.”
- 4/2019 American Identity Movement distributed propaganda at Gillette College that read, “Diversity Destroys Nations” and “Protect American Workers.”
- 7/2019 Approximately eight members of the American Identity Movement dropped a banner from a building roof along the route of the grand parade at Cheyenne Frontier Days that stated, “Defend America, Deport Them All.”

The Framework for Hate Crime Laws

Consistent with the First Amendment. Hate crime laws are consistent with the First Amendment. The First Amendment does not protect violence – and it does not prevent the government from imposing criminal penalties for violent discriminatory conduct directed against victims on the basis of their personal, immutable characteristics. Hate crime laws do not punish speech. Individuals remain free to think and say whatever they want. It is only when a person crosses a line into criminal conduct – and intentionally targets someone for a crime because of an immutable characteristic – that a hate crime statute can be triggered. In *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), the Supreme Court effectively recognized that when it unanimously upheld the constitutionality of the Wisconsin penalty-enhancement hate crime statute.

Response to fit the crime. Criminal activity motivated by bias is different from other criminal conduct. These crimes occur *because of* the perpetrator’s bias or animus against someone on the basis of actual or perceived status—the victim’s race, religion, national origin, gender, gender identity, sexual orientation, or disability is the reason for the crime. In the vast majority of these crimes, absent the victim’s personal characteristic, no crime would occur at all.

Hate crimes are message crimes. Because bias-motivated violence has a uniquely serious impact on the community, it is entirely appropriate for legislators to acknowledge that this form of criminal conduct merits a unique response.

For example, just days ago, on October 27, 2019, we marked the one-year anniversary of the horrific massacre at the Tree of Life synagogue in Pittsburgh. The assailant did not know or have any animus towards the eleven innocent people he murdered. Rather his aim was to murder Jews, to terrorize Jews, and to deliver a message of hate to all Jews. When the attack occurred, Jews around the world rightly understood it as an attack on them, not just the congregants in Squirrel Hill.

Bigotry cannot be outlawed. But laws shape attitudes, and attitudes shape behavior. Hate crime laws demonstrate an important commitment to confront bias-motivated criminal activity.

The Need for a Hate Crime Law in Wyoming

In recognition of the odious nature of these crimes and their serious impact, it is entirely appropriate that they be treated differently. In recognition of that, 45 states and the District of Columbia have enacted bias-motivated crime laws, many of which are based on or similar to the model statute that ADL drafted in 1981. Such laws not only have become the norm in virtually every state, but they are also broadly supported by a wide variety of religious, civil rights, and law enforcement organizations, including the International Association of Chiefs of Police and the National District Attorneys Association. As only one of five states that still lack a bias-motivated crime statute, Wyoming is an outlier. There is an opportunity to change that, and to send the countervailing message that Wyoming stands against bias-motivated crimes.

On the 10-year anniversary of the federal Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, it is time for Wyoming to join the 45 other states that have already adopted a hate crimes statute.

To be taken off the list of five states we maintain and promote of states without a hate crime law, a law must be specific, clear, and include a comprehensive list of enumerated characteristics.

Underlying criminal offense: There is a distinct difference between addressing civil rights violations and a hate crime law. In order to have a hate crime, there must be an underlying criminal offense. An effective hate crime law includes the requisite nexus to criminal conduct. A hate crime statute in Wyoming should replace or be divorced from the current criminal discrimination language, which is inadequate to fulfill the purpose of a hate crime law.⁶

Enumerated characteristics: Consistent with the purpose of bias-motivated crime laws, virtually every law in the country includes enumerated characteristics. Wyoming's law should do so as well. In the vast majority of these crimes, but for the victim's personal

⁶ WY Stat. §6-9-102

characteristic, no crime would have been committed at all. Failing to include a specific list of characteristics would therefore undermine the very purpose of hate crimes legislation. It would also render the legislation meaningless and ineffective. Experience in other states reflects the dangers of failing to include enumerated characteristics.

Georgia’s unconstitutional hate crimes statute: For example, in Georgia, the state legislature originally proposed a hate crimes bill that enumerated characteristics such as those listed above. However, Georgia’s legislature ultimately removed the list of characteristics and watered the statute down to be generic. The Georgia Supreme Court ruled that this generic statute, in using “bias and prejudice” divorced from context, was unconstitutionally vague, and it struck down the statute. *Botts v. State*, 604 S.E.2d 512, 514 (Georgia 2004). As a result, Georgia, like Wyoming, is back to being one of only five states in the country that lacks a hate crimes law.

Sexual orientation and gender identity: It is imperative that any bias-motivated crimes law include all of the enumerated characteristics – actual or perceived race, color, religion, national origin, sex, disability, ancestry, ethnicity, sexual orientation, and gender identity. Efforts to remove gender identity, sexual orientation, or any other characteristic, should be soundly rejected. Inclusion of these characteristics is essential. As we have seen in news reports across the country, violence targeting transgender individuals continues to be prevalent. In fact, according to the FBI data, the number of reported gender-identity-based hate crimes quadrupled between 2013 and 2016. And in 2016, the most recent year for which FBI data is available, 1,076 sexual-orientation-based hate crimes were reported to the FBI, which accounted for approximately 17.6% of all reported hate crimes that year. Best practices on hate crime laws, response, and training therefore include sexual orientation and gender identity. For example, the International Association of Chiefs of Police (IACP) specifically includes those categories in its model policy for hate crimes investigations, and the FBI includes information on hate crimes based on sexual orientation and gender identity in its Hate Crime Data Collection Guidelines and Training Manual. Any bias-motivated crime bill in Wyoming must also include sexual orientation and gender identity.

Inclusion of ‘associated with’ hate crimes: People often think about hate crimes in terms of a victim being targeted because of the victim’s own immutable characteristic. However, consider the scenario in which a white woman is attacked, not because of *her* race, but because she is dating an African American man. Because hate crimes can take this “associational” form, too, several other states’ hate crime statutes – including Illinois’s – not only address the targeting of victims for their own characteristics, but also cover crimes in which the victims are targeted because of their association with a person who has or is perceived to have those characteristics. We recommend ensuring that any hate crime law similarly includes this component.

Mandatory training: The strongest bias-motivated crime laws in the country include mandatory bias-motivated crime training for law enforcement officers. In order for bias-motivated crime laws to be most effective, the first responders – police officers – must be trained regarding identifying, responding to, and reporting such crimes. To be most effective, however, Wyoming should enact a hate crime law that includes mandatory law enforcement training. As the largest U.S. non-governmental organization trainer of law enforcement on bias-motivated crimes, ADL would be happy to assist. For decades, we have provided training, free of cost, to federal, state, and local law enforcement entities around the country – including entities in Wyoming – on this issue.

Mandatory reporting and data collection: Finally, as previously stated, collection of data is indispensable to counteract bias-motivated crimes. As in other fields, society relies on statistics to identify patterns, analyze trends, and, ultimately, to create solutions – both legislative and otherwise. Data collection raises public awareness of the problem and can spark improvement in the local response to the issue. A hate crime law should include a mandatory reporting provision for Wyoming law enforcement agencies to report bias-motivated crimes, making clear that all law enforcement agencies are covered by that reporting requirement and requiring those agencies to report that same data to the FBI, consistent with the federal HCSA.

Conclusion

The fundamental cause of bias-motivated violence in the United States, whether it is committed by members of extremist groups or not, is the persistence of racism, homophobia, transphobia, xenophobia, anti-Semitism, Islamophobia, and other forms of bigotry. Unfortunately, there are no quick, complete solutions to these problems. Yet, in conjunction with anti-bias educational programs, state hate crime laws play a strong and incredibly important role in confronting and addressing bias-motivated crimes. They help to send the message that no one should be targeted for a crime because of who they are, and that Wyoming recognizes the unique harm that such crimes cause. We strongly urge Wyoming to enact a bias-motivated crime law. We look forward to working with the US Commission on Civil Rights to accomplish these recommendations and to improve the response to each and every hate crime in Wyoming and across the country.