



**BOARD OF ADVISORS**

June 18, 2004

Hon. William P. Barr  
Former Attorney General  
of the United States

Prof. Stephen L. Carter  
Yale Law School

His Eminence  
Francis Cardinal George, O.M.I.,  
Archbishop of Chicago

Prof. Mary Ann Glendon  
Harvard Law School

Hon. Orrin G. Hatch  
United States Senator  
(R-Utah)

Hon. Henry J. Hyde  
United States Representative  
(R-Illinois)

Prof. Douglas Kmiec  
Pepperdine Law School

Prof. Douglas Laycock  
University of Texas Law School

Rev. Richard John Neuhaus  
President, Institute of Religion  
and Public Life

Eunice Kennedy Shriver  
Founder and Honorary Chairman,  
Special Olympics International

Sargent Shriver  
Chairman of the Board,  
Special Olympics International

Dr. Ronald B. Sobel  
Senior Rabbi, Congregation Emanu-El  
of the City of New York

John M. Templeton, Jr., M.D.  
Bryn Mawr, Pennsylvania

**Re: Pennsylvania's Amended Hate Crimes Law  
and the Chilling of Religious Speech**

Dear Religious Leader:

It is a measure of our times that religious leaders have lately considered taking out liability insurance to cover remarks made from the pulpit.

As you're probably aware, concerns like these reached a peak recently when Pennsylvania broadened its hate crimes law to include "sexual orientation" and "gender identity" as motivations that trigger heavier penalties, if one is found guilty of "harassment." This development was all the more ominous in light of another amendment passed at the same time: the legal definition of "harassment" was expanded to include "harassment by communication," suggesting that one might be found guilty of harassment simply on the basis of spoken words.

Although legislators expressly disavowed the motive at the time, one might be forgiven the impression that one purpose of this legislation was to generate a fear of prosecution among those who would preach and teach in favor of the traditional prohibition on homosexual behavior – a teaching so common to so many faiths. Whether intended or not, this new law should not be allowed to create such a "chilling effect" on core religious speech.

The Becket Fund is a bipartisan, interfaith, public interest law firm that was founded to protect the free, public expression of *all* religious traditions. We defend religious freedom *for everyone* in American courts of law, as a recognized non-governmental organization (NGO) at the United Nations, in the academy, and in the media. We specialize in constitutional law and have been involved in scores of cases nationwide, in state and federal courts at all levels.

1350 Connecticut Avenue, NW  
Suite 605  
Washington, DC 20036-1735  
Phone: 202-955-0095  
Fax: 202-955-0090  
[www.becketfund.org](http://www.becketfund.org)

Accordingly, we are writing now in order to counteract, in two ways, any chilling effect created by the recent changes in Pennsylvania's hate-speech law. First, as we explain briefly below, the new law is unlikely to be applied against this type of religious speech in the first place, and the First Amendment is likely to prohibit any such mischievous application. Second, if you are threatened with prosecution under this law because of something you've said from the pulpit, contact us. We will defend, free of charge, anything said from the pulpit, conservative or liberal, wisdom or nonsense, so long as it is a religious message given in good faith.

The new law is unlikely to be applied to preaching against homosexual conduct. The Pennsylvania crime of "harassment" must involve "intent to harass, annoy or alarm another," *plus* one of the following:

- "strick[ing], shov[ing], kick[ing] or otherwise subject[ing] another person to physical contact, or attempt[ing] or threaten[ing] to do the same";
- "follow[ing] the other person in or about a public place or places";
- "engag[ing] in a course of conduct or repeatedly commit[ing] acts which serve no legitimate purpose"; or
- "convey[ing] a message without intent of legitimate communication...."

It is difficult to imagine a religious sermon or other verbal communication that would satisfy these requirements for prosecution. So it comes as no surprise that, even though the harassment statute has covered religious leaders (and everyone else) for years, the state appears never to have brought a prosecution under the statute against religiously motivated speech or conduct. And even with the addition of communication as a basis for prosecution, it remains unlikely that speech from the pulpit would be prosecuted, even under the terms of the statute itself. That is because the statute requires that the message be conveyed "without intent of legitimate communication," and that condition simply does not apply to religious preaching in good faith.

While the addition of "sexual orientation" and "gender identity" to the factors in the "ethnic intimidation law" (hate crime law) is a source of some concern, it applies only once a criminal conviction for "harassment" has been obtained – then it imposes a more severe penalty. Without a harassment conviction, the recent amendment simply has no effect.

Applying the new law to preaching against homosexual conduct would be unconstitutional. As a general matter, the First Amendment to the U.S. Constitution protects the freedom of *any* religious minister – rabbi, reverend, imam or other – to preach about *anything at all* without the threat of government sanction. Indeed, the language of the Pennsylvania harassment statute recognizes this constitutional limitation, stating explicitly that it "shall not apply . . . to any constitutionally protected activity." Freedom of speech and free exercise of religion are unquestionably protected by the First Amendment, and in at least two cases brought under the Pennsylvania harassment statute, convictions were overturned precisely because they involved constitutionally protected speech. (Neither case involved religious expression – one involved wording on a T-shirt, the other a sign on a truck.)

This letter, of course, is both brief and general. It's not legal advice. It is an overview of the law in Pennsylvania with regard to constitutionally-protected religious speech. If you are interested in a formal, detailed account of the law, please contact us – either by fax, or by e-mail at [mail@becketfund.org](mailto:mail@becketfund.org) – and we will gladly provide it. And if you should ever find yourself confronted with the threat of prosecution because of a sermon or other religious communication, I urge you to contact us *at once* so that we can investigate your case.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kevin J. Hasson". The signature is stylized and cursive, with a prominent initial "K" and "H".

Kevin J. "Seamus" Hasson, Esq.