

New US Law Blurs the Line Between Hate Speech and Hate Crime

<http://www.ronpaulinstitute.org/archives/peace-and-prosperity/2017/september/16/new-us-law-blurs-the-line-between-hate-speech-and-hate-crime/>

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Eleven years ago, this essay argued against hate-crime laws. One argument read “People can eventually be accused of hate crimes when they use hateful speech. Hate crimes laws are a seed that can sprout in new directions.” This has now come to pass, I am sorry to say. This week, the Congress passed S. J. Res. 49, and President Trump signed it, making it part of the U.S. legal code.

The law rejects “White nationalists, White supremacists, the Ku Klux Klan, neo-Nazis, and other hate groups...” But why? Because of their ideas? Because of their expression of these ideas? No government that stands for freedom and free speech, whose charge is to protect rights, should be singling out specific groups by name and by law declaring them as outlaws or threats because of their philosophies. If they have committed a crime, such as defamation of character or incitement to riot or riot itself, then charge them and try them. But American government has no legitimate authority to single out some of its citizens in this way. This, furthermore, is an exceedingly bad precedent. Who’s next?

The resolution is too specific, but it’s also dangerously vague. The term “other hate groups” has no known definition. Suppose that this term is defined by a group like the Southern Poverty Law Center. The SPLC currently names 917 groups as hate groups (see here for a list). Their criteria are not restricted to violent actions. They comprise SPEECH. They say “All hate groups have beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics.” They are very clear about this: “Hate group activities can include criminal acts, marches, rallies, speeches, meetings, leafleting or publishing.”

This Congressional resolution is a declaration that certain kinds of groups, some named but many, many others open to inclusion, are to be attacked by the U.S. government. The law urges “the President and the President’s Cabinet to use all available resources to address the threats posed by those groups.” The term “threats” in the first paragraph is vague, dangerously vague. However, the very next paragraph singles out free speech actions when “hundreds of torch-bearing White nationalists, White supremacists, Klansmen, and neo-Nazis chanted racist, anti-Semitic, and anti-immigrant slogans...” The same sentence joins this with violent actions “...and violently engaged with counter-demonstrators on and around the grounds of the University of Virginia in Charlottesville...”

This law regards free speech as a threat, linking it to violence, painting them with one brush. There can be no justice that can stem from such a completely sloppy and inexcusably amateurish legal treatment. This linkage is made clear in paragraph seven with this language: “...communities everywhere are concerned about the growing and open display of hate and violence being perpetrated by those groups...” There is no distinction made here between the “open display of hate” and “violence being perpetrated”. As I predicted 11 years ago in arguing against hate crime laws, hate speech is being identified with hate crime.

I am just as uncomfortable with the notion of defining and singling out “hate speech” as some sort of new danger or threat or harmful activity or crime, to be dealt with by government or courts of law as I was 11 years ago with the idea of “hate crime”. The standard categories of crime are quite enough without adding to them a government laundry list of prejudices and aversions that everyone is not supposed to express or feel, under penalty of government law.