

Legal Update from Brian Flagler

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Will the Matthew Shepard Act restrict publication of Christian books?

The Matthew Shepard Act, officially the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, was passed by Congress and signed into law by President Obama in October of this year. This measure expands the 1969 United States federal hate-crime law to include crimes motivated by a "victim's actual or perceived gender, sexual orientation, gender identity, or disability."

As Congress considered this bill in 2007, [James Dobson claimed](#) that adding sexual orientation and gender identity to the law would "muzzle people of faith who dare to express their moral and biblical concerns about homosexuality." Some in the publishing community have asked how the law might be used to restrict publishers' First Amendment freedom to publish material critical of homosexuality and transgender behavior.

Though Dobson and others are concerned about the cultural implications, whether the act will be used to quell the publication of Christian content depends upon how aggressively the Department of Justice interprets and enforces the law, and how courts interpret the constitutionality of any such expansive application of the act if it were to occur. At this point, the Attorney General has stated that the government intends only to prosecute physical violence prompted by hatred towards these groups.

And, in response to conservative's concerns during deliberations on the legislation, a "Rule of Construction" was added to highlight the First Amendment boundaries around enforcement of the act:

"CONSTRUCTION AND APPLICATION.-Nothing in this division, or an amendment made by this division, shall be construed or applied in a manner that infringes any rights under the first amendment to the Constitution of the United States. Nor shall anything in this division, or an amendment made by this division, be construed or applied in a manner that substantially burdens a person's exercise of religion

(regardless of whether compelled by, or central to, a system of religious belief), speech, expression, or association, unless the Government demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest, if such exercise of religion, speech, expression, or association was not intended to-

- (A) plan or prepare for an act of physical violence; or
- (B) incite an imminent act of physical violence against another."

It will be interesting to see how active the Department of Justice is in prosecuting claimed violations of this law. At this point, it does not appear that the act represents an imminent threat to the publication of Christian content, but all Christian publishers should carefully monitor this issue.



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