

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

GARY GLENN; PASTOR LEVON YUILLE;  
PASTOR RENÉ B. OUELLETTE; PASTOR  
JAMES COMBS,

Plaintiffs,

v.

ERIC H. HOLDER, JR., in his official capacity  
as Attorney General of the United States,

Defendant.

Case No.

**COMPLAINT**

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Plaintiffs Gary Glenn, Pastor Levon Yuille, Pastor René B. Ouellette, and Pastor James Combs (collectively referred to as “Plaintiffs”), by and through their undersigned counsel, bring this Complaint against the above-named Defendant, his employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

**INTRODUCTION**

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First, Fifth, and Tenth Amendments and the Commerce Clause of the United States Constitution, challenging Defendant’s authority to enforce 18 U.S.C.

§ 249, the so-called “Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act” (hereinafter referred to as “Hate Crimes Act” or “Act”). Specifically, Plaintiffs challenge § 249(a)(2) of the Hate Crimes Act, which criminalizes so-called “bias” crimes motivated by a person’s “actual or perceived” “sexual orientation” or “gender identity” and thus elevates those engaged in certain deviant sexual behaviors to a special, protected class of persons under federal law.

2. Section 249(a)(2) of the Hate Crimes Act creates a special class of persons whose protection of the law will be, in George Orwell’s phrase, “more equal than others.” Thus, if some persons are more equal than others, then some must be less equal in violation of the equal protection guarantee of the United States Constitution.

3. Special prosecutions for “hate crimes” are inherently divisive. As Congressman Todd Akin stated in the House Congressional Record, “[The Hate Crimes Act] increases hatred in America. . . . The law violates the most basic principle of law. Lady Justice is always supposed to have a blindfold across her face because, regardless of who you are when you appear before Lady Justice, . . . Lady Justice does not notice. [The Hate Crimes Act] violates that basic principle. It creates animosity by elevating one group over another group; thus, it creates hatred.”

4. Section 249(a)(2) of the Hate Crimes Act has the purpose and effect of deterring, inhibiting, and chilling the exercise of fundamental rights by persons, including Plaintiffs, who publicly oppose homosexual activism, the homosexual lifestyle, and the homosexual agenda, which seeks to normalize intrinsically disordered sexual behavior that is contrary to the moral law and harmful to the common good of society. Supporters of the homosexual agenda seek to

demonize, vilify, and criminalize deeply held religious beliefs that are in opposition to their agenda.

5. Section 249(a)(2) of the Hate Crimes Act thus promotes another Orwellian concept: thought crimes. Section § 249(a)(2) criminalizes certain ideas, beliefs, and opinions, and the involvement of such ideas, beliefs, and opinions in a crime will make the crime deserving of federal prosecution. Consequently, government officials, including Defendant, are claiming the power to decide which thoughts are criminal under federal law and which are not.

6. Section 249(a)(2) of the Hate Crimes Act is intended to send a government-endorsed message to those persons who oppose the homosexual agenda on the basis of deeply held religious beliefs, such as Plaintiffs, that their religious beliefs are disfavored and the equivalent of racist beliefs.

7. Section 249(a)(2) of the Hate Crimes Act is an effort to eradicate religious beliefs opposing the homosexual agenda from the marketplace of ideas by demonizing, vilifying, and criminalizing such beliefs as a matter of federal law and policy.

8. The enforcement history of similar “hate crimes” legislation, the public statements of homosexual activists, and the influence of homosexual activists within the federal government demonstrate that Plaintiffs’ fears of adverse enforcement action under the Act on account of their deeply held religious beliefs are credible.

9. In order to secure its passage, the politically-divisive Hate Crimes Act was included in the National Defense Authorization Act for Fiscal Year 2010 (hereinafter referred to as “Defense Authorization Act”), even though the Act is non-germane and non-related to defense. As Senator John McCain stated in the Senate Congressional Record, “It is indeed,

unfortunate, that we are using the brave men and women in uniform as leverage to pass hate crimes legislation.”

10. Plaintiffs seek a declaration that § 249(a)(2) of the Hate Crimes Act violates their fundamental rights to freedom of speech, expressive association, and the free exercise of religion protected by the First Amendment; a declaration that § 249(a)(2) of the Act violates the equal protection guarantee of the Fifth Amendment; a declaration that Congress lacked authority under the United States Constitution to enact § 249(a)(2) of the Act; an injunction enjoining the enforcement of § 249(a)(2) of the Act; and an award of attorney fees and costs pursuant to 28 U.S.C. § 2412 (the Equal Access to Justice Act), and other applicable laws.

#### **JURISDICTION AND VENUE**

11. This action in which the United States is a defendant arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1346.

12. Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

13. Venue is proper under 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and because this is the judicial district in which the plaintiffs reside.

## PLAINTIFFS

14. Plaintiff Gary Glenn is an adult citizen of the United States, a resident of the State of Michigan, and a devout Christian. He is currently the president of the American Family Association of Michigan (“AFA—Michigan”).

15. The mission statement of “AFA—Michigan” is as follows: “This corporation is organized to do all those things necessary to promote the welfare of children by the promulgation of the Judeo-Christian ethic and to do all things necessary to promote, advocate, enhance and preserve the traditional and natural family in our society.”

16. Plaintiff Glenn is an outspoken opponent of homosexual activism and so-called “gay rights” legislation, such as § 249(a)(2) of the Hate Crimes Act. He is often publicly described and listed as an “enemy” of those who promote “gay rights” and other aspects of the homosexual agenda. In 2006, for example, *The Advocate*, a “gay-rights” periodical, described Plaintiff Glenn as “[a] relentless foe of gay rights in every context.”

17. As a Christian and through his activities as President of “AFA—Michigan,” Plaintiff Glenn takes a strong public stand against homosexual activism, the homosexual lifestyle, and the homosexual agenda.

18. Plaintiff Levon Yuille is an adult citizen of the United States, a resident of the State of Michigan, and a devout Christian. Plaintiff Yuille is the Pastor of The Bible Church, which is located in Ypsilanti, Michigan. He is also the National Director of the National Black Pro-Life Congress and the host of *Joshua’s Trail*, a radio talk show that airs in Michigan and can be heard in parts of Canada.

19. As part of his public ministry, which includes his radio talk show, Plaintiff Yuille takes a strong public stand against homosexual activism, the homosexual lifestyle, and the homosexual agenda. As a result, he is often publicly described and listed as an “enemy” of those who promote “gay rights” and other aspects of the homosexual agenda. Plaintiff Yuille is often warned by his Canadian listeners that he will be targeted for adverse law enforcement action under § 249(a)(2) of the Hate Crimes Act for his public ministry similar to how ministers and other religious persons in Canada are being silenced by that country’s “hate crimes” legislation.

20. As an African-American, Plaintiff Yuille objects to and finds it offensive to equate the so-called “civil rights” struggle of persons who engage in homosexual behavior with the real civil rights struggle of African-Americans.

21. Plaintiff René B. Ouellette is an adult citizen of the United States, a resident of the State of Michigan, and a devout Christian. He is the Pastor of First Baptist Church of Bridgeport, Michigan, which has approximately 7,000 members. Plaintiff Ouellette also operates the Bridgeport Baptist Academy and the Bridgeport Baptist Child Care.

22. Plaintiff Ouellette is the author of five books as well as many pamphlets and Bible tracts. His writings and his public speaking, including his sermons, often reflect and express his deep Christian faith. As part of his public ministry, Plaintiff Ouellette takes a strong public stand against homosexual activism, the homosexual lifestyle, and the homosexual agenda.

23. Plaintiff James Combs is an adult citizen of the United States, a resident of the State of Michigan, and a devout Christian. He is the lead Pastor of Faith Church, The Point Church, The Rock Church, and The River Church, all of which are located in Michigan. As a result, he pastors approximately 10,000 church members.

24. As part of his public ministry, Plaintiff Combs takes a strong public stand against homosexual activism, the homosexual lifestyle, and the homosexual agenda.

25. Plaintiffs engage in their public ministry in opposition to homosexual activism, the homosexual lifestyle, and the homosexual agenda in cities and towns throughout the United States, including San Francisco, California.

### **DEFENDANT**

26. Defendant Eric H. Holder, Jr. is the Attorney General of the United States. As the Attorney General, he is the head of the Department of Justice and the chief law enforcement officer of the federal government. Accordingly, he is charged with enforcing the Hate Crimes Act. Defendant Holder is sued in his official capacity.

27. Defendant Holder encourages, endorses, promotes, and supports the homosexual agenda in his official capacity as Attorney General of the United States.

### **STATEMENT OF FACTS**

#### **A. God's Word on Homosexuality.**

28. Plaintiffs have a deeply held religious belief that the Bible is the unalterable and divinely inspired Word of God. For Plaintiffs and other Christians, the Bible is the ultimate authority for both belief and behavior.

29. According to the Bible, homosexual acts are acts of grave depravity that are intrinsically disordered. They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.

30. The Apostle Paul, writing by inspiration of the Holy Spirit, declares that those who engage in homosexual acts “shall not inherit the kingdom of God,” stating further, “And such were some of you.” (1 Corinthians 6:9-11).

31. Homosexuality is an illicit lust forbidden by God, who said to His people Israel, “Thou shalt not lie with mankind, as with womankind: it is abomination.” (Leviticus 18:22).

32. In every place that the Bible refers to homosexuality, the emphasis is upon the perversion of sexuality. The person engaging in homosexual behavior is guilty of “leaving the natural use of the woman” (Romans 1:27), meaning that his behavior is “against nature” (Romans 1:26), and thus contrary to God’s will.

33. In Old Testament times in Israel, God dealt severely with those who engaged in homosexual behavior. He warned His people through Moses, “If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.” (Leviticus 20:13). Quoting this and other passages from the Bible referring to homosexuality subjects Plaintiffs to adverse law enforcement action under the Hate Crimes Act.

34. The complementarity of the sexes reiterates a truth that is evident to right reason and recognized as such by all the major cultures and religions of the world. Marriage, for example, is not just any relationship between human beings. It was established by God with its own nature, essential properties, and purpose. No ideology can erase from the human spirit the certainty that marriage exists solely between a man and a woman, who by mutual personal gift, proper and exclusive to themselves, tend toward the communion of their persons. In this way,

they mutually perfect each other in order to cooperate with God in the procreation and upbringing of new human lives.

35. According to the Bible, there are absolutely no grounds for considering homosexuality or homosexual unions to be in any way similar or even remotely analogous to God's plan for marriage and family. The union of man and woman in marriage is holy, while homosexual acts go against moral law.

36. The Bible teaches that respect for persons cannot lead in any way to approval of homosexual behavior. The common good requires that laws recognize, promote, and protect marriage between a man and a woman as the basis of the family, the primary unit of society. Providing legal recognition of homosexuality by enacting special protections and recognition for those who engage in homosexual behavior, such as the protections and recognition afforded by § 249(a)(2) of the Act, would mean not only the approval of deviant behavior, with the consequence of making it a model in present-day society, but would also obscure basic values which belong to the common inheritance of humanity. Christians cannot fail to defend these values, for the good of men and women and for the good of society itself.

37. Moral conscience requires that, in every occasion, Christians give witness to the whole moral truth. Consequently, Plaintiffs have an obligation to state clearly the immoral nature of homosexuality so as to safeguard public morality and, above all, to avoid exposing young people to erroneous ideas about sexuality and marriage. Clear and emphatic opposition to homosexuality, homosexual activism, and the homosexual agenda is a duty of all Christians.

38. As Christians, Plaintiffs are called to spread God's Word, including God's Word regarding homosexuality. "Go ye into all the world, and preach the gospel to every creature."

(Mark 16:15). Accordingly, Plaintiffs publicly denounce homosexuality, homosexual activism, and the homosexual agenda as being contrary to God's law and His divinely inspired Word.

39. Differentiating between persons or refusing social recognition or special benefits for certain behaviors is unacceptable only when it is contrary to justice. The denial of special protections for forms of cohabitation or sexual behaviors that are not and cannot be marital is not opposed to justice; on the contrary, justice requires it.

40. Based on their deeply held religious convictions, Plaintiffs believe that a just law is a man-made code that comports with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. Consequently, an unjust law is a human law that is not rooted in eternal law and natural law and is thus no law at all.

41. All crimes of violence perpetrated against innocent individuals should be punished accordingly. Under existing State law, such crimes are being severely punished. Consequently, § 249(a)(2) of the Hate Crimes Act is unnecessary, and insofar as it elevates those engaged in sexual deviance and sinful behavior to a special class of persons worthy of special protections and recognition, it is an unjust and immoral law.

**B. Hate Crimes Act.**

42. The Hate Crimes Act is codified at 18 U.S.C. § 249. A true and accurate copy of the Hate Crimes Act is attached to this Complaint as Exhibit 1 and incorporated herein.

43. Section 249(a)(2) of the Hate Crimes Act states, in relevant part: "(2) Offenses involving actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability. (A) In general. Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to

any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person” shall be imprisoned, fined, or both.

44. Defendant Holder publicly described the Hate Crimes Act as “a great tool for the Justice Department.”

45. The Hate Crimes Act has a “certification requirement,” which permits Defendant Holder to prosecute any offense under the Act if “a prosecution by the United States is in the public interest and necessary to secure substantial justice,” which essentially removes any meaningful restriction or limitation on the federal government’s power to investigate and subsequently prosecute or attempt to prosecute allegations brought pursuant to the Act.

46. The “rule of construction” for the “certification requirement” contains the following caveat: “Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.” This provision removes any restriction or limitation on the federal government’s power to investigate allegations brought pursuant to the Act.

47. Any person who is suspected or accused of committing an offense punishable under § 249(a)(2) of the Hate Crimes Act, regardless of whether Defendant Holder can demonstrate any federal interest or nexus with interstate commerce, is nonetheless subject to a federal investigation, including a federal grand jury.

48. Section 249(a)(2) of the Hate Crimes Act provides law enforcement with authorization and justification to conduct federal investigative and other federal law enforcement

actions against Plaintiffs and others deemed to be opponents of homosexual activism, the homosexual lifestyle, and the homosexual agenda.

49. Section 249(a)(2) of the Hate Crimes Act expands the jurisdiction of the Federal Bureau of Investigation (FBI) and other federal law enforcement and intelligence gathering agencies to include the investigation of persons alleged to be opponents of homosexual activism, the homosexual lifestyle, and the homosexual agenda, such as Plaintiffs.

50. Section 249(a)(2) of the Hate Crimes Act forces law enforcement officials, including prosecutors, to treat identical crimes differently depending upon the government official's determination of the political, philosophical, or religious beliefs of the offender.

51. Pursuant to § 4710 of the Defense Authorization Act, which is applicable to the Hate Crimes Act, "evidence of speech, beliefs, association, group membership, or expressive conduct" that is "relevant" and otherwise "admissible under the Federal Rules of Evidence" can be used in a criminal trial for an offense charged under the Act. Indeed, such evidence is relevant and necessary to prove an element of a charged offense under § 249(a)(2). Thus, speech, beliefs, and expressive conduct are targeted by the Act.

52. Section 249(a)(2) of the Hate Crimes Act subjects Plaintiffs to increased government scrutiny, questioning, investigation, surveillance, and intimidation on account of their strong, public opposition to homosexual activism, the homosexual lifestyle, and the homosexual agenda, thereby causing a tangible and concrete deterrent, inhibitory, and chilling effect on Plaintiffs' activities and their rights to freedom of speech, expressive association, and the free exercise of religion.

53. On account of § 249(a)(2) of the Hate Crimes Act, Plaintiffs are targets for government scrutiny, questioning, investigation, surveillance, and other adverse law enforcement actions and thus seek judicial reassurance that they can freely participate in their speech and related religious activities without being investigated or prosecuted by the government or becoming part of official records because of their Christian beliefs.

**C. Liability as a Principal.**

54. Pursuant to 18 U.S.C. § 2, “Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”

55. Consequently, any person who “aids, abets, counsels, commands, induces or procures” the commission of an offense under § 249(a)(2) of the Hate Crimes Act is liable as if the person committed the violent crime.

56. Plaintiffs have been accused by those who engage in homosexual behavior, supporters of the homosexual agenda, and supporters of § 249(a)(2) of the Hate Crimes Act of counseling, commanding, or inducing violent acts that are prohibited by and punishable under the Act.

57. For example, the executive director of the National Gay and Lesbian Task Force, an organization that supported the Hate Crimes Act, blamed “leaders of the so-called Christian right and their political allies who use their vast resources, media networks and affiliated pulpits to blame lesbian, gay, bisexual and transgender people for all the ills of society” for inducing violence against persons who engage in homosexual behavior.

58. In the case of the death of Andrew Anthos—a 72-year-old Detroit man who was allegedly the victim of a “hate crime” because of his “sexual orientation”—the executive director of the National Gay and Lesbian Task Force blamed, *inter alia*, Plaintiff Glenn’s “homophobic rants” for causing his death. The executive director stated, “It is appalling hypocrisy for these forces to pretend that their venomous words and organizing have no connection to the plague of hate violence against gay people, including the murder of Mr. Anthos.”

59. The death of Mr. Anthos was cited by Senator Carl Levin as evidence of the need to extend federal “hate crimes” legislation to include “sexual orientation” as a protected classification.

60. Despite attempts by homosexual activists to politicize the death of Mr. Anthos, the local police investigation and the medical examiner ultimately determined that there was no assault and that Mr. Anthos died of natural causes.

61. The former director of policy for the Triangle Foundation, a Michigan-based homosexual lobby group that supported the Hate Crimes Act, publicly stated, “We personally believe that the AFA may support the murder of gay, lesbian, and bisexual people.”

62. The former executive director of the Triangle Foundation publicly stated the following regarding “hate crimes”: “The vocal anti-gay activists should be held accountable as accessories to these crimes because, many times, it is their rhetoric that led the perpetrators to believe that their crimes are OK. . . . If a criminal borrows a gun and then uses it to kill someone, the law considers the gun owner an accessory to the crime. So, too, are the people who own the words that incite violence.”

63. The Triangle Foundation has established “The Triangle Foundation Reporting Line” to report “hate crimes.” The Triangle Foundation also provides “staff and trained volunteers” to assist “in filing a report” for an alleged “hate” or “bias” crime.

64. Section 249(a)(2) of the Hate Crimes Act is a “tool” of intimidation for federal officials, including Defendant Holder. It provides a basis for government officials to abuse their positions of power to stifle political opinion and opposition to the homosexual agenda. It also provides political adversaries with a basis for making official criminal complaints and allegations against opponents of the homosexual agenda, such as Plaintiffs, thereby deterring, inhibiting, and chilling the exercise of Plaintiffs’ rights to freedom of speech, expressive association, and the free exercise of religion.

65. Government officials, sponsors, and supporters of § 249(a)(2) of the Hate Crimes Act have accused opponents of the homosexual agenda, such as Plaintiffs, of counseling, commanding, or inducing violent acts that are prohibited by and punishable under the Act.

66. For example, members of the Board of Supervisors of the City and County of San Francisco have officially stated that “[w]hat happened to Matthew Shepard is in part due to the message being espoused by [Christian and pro-family] groups that gays and lesbians are not worthy of the most basic equal rights and treatments. It is not an exaggeration to say that there is a direct correlation between these acts of discrimination, such as when gays and lesbians are called sinful and when major religious organizations say they can change if they tried, and the horrible crimes committed against gays and lesbians.”

67. The Board of Supervisors of the City and County of San Francisco passed an official government resolution stating, in part, that speech “which insuate[s] a gay or lesbian

orientation is immoral and undesirable create[s] an atmosphere which validates oppression of gays and lesbians and encourages maltreatment of gays and lesbians; and WHEREAS, There is a marked increase in anti-gay violence which coincides with defamatory and erroneous campaigns against gays and lesbians; and, WHEREAS, An unfortunate, extreme result of these anti-gay campaigns is violence and even death.”

68. By preaching God’s Word on homosexuality, Plaintiffs and others are engaging in conduct that subjects them to federal questioning, investigation, and prosecution as principals pursuant to 18 U.S.C. § 2 for counseling, commanding, or inducing a federal offense under § 249(a)(2) of the Hate Crimes Act.

69. By operation of 18 U.S.C. § 2 and pursuant to the authority granted by § 249(a)(2) of the Hate Crimes Act, Defendant and other federal law enforcement officials can investigate and criminally charge and prosecute persons, including Plaintiffs, for preaching God’s Word on homosexuality, thereby deterring, inhibiting, and chilling the exercise of Plaintiffs’ rights to freedom of speech, expressive association, and the free exercise of religion.

**D. History of Enforcement of “Hate Crimes” Legislation.**

70. Criminal laws similar to § 249(a)(2) of the Hate Crimes Act have been enacted in other jurisdictions in the United States and in foreign jurisdictions. In these jurisdictions, the “hate crimes” legislation has been enforced in ways that deters and even punishes the speech of those persons who speak out in opposition to homosexuality and the homosexual agenda. The defendants in such actions are often evangelical Christians and other religious persons who oppose homosexuality, homosexual activism, and the homosexual agenda based on the Bible and deeply held religious beliefs, similar to those religious beliefs held by Plaintiffs.

71. “Hate crimes” legislation has been used to deter and punish the speech of priests, pastors, and other religious persons who speak out against homosexuality, homosexual activism, and the homosexual agenda in Pennsylvania, Australia, Canada, England, Ireland, and Sweden.

72. Plaintiffs are aware of this history and the ways in which “hate crimes” legislation similar to § 249(a)(2) of the Hate Crimes Act is used to deter and punish speech opposing homosexuality, homosexual activism, and the homosexual agenda—speech that Plaintiffs similarly engage in based on the Bible and their deeply held religious beliefs.

73. In 2007, when Congress was considering similar hate crimes legislation, a motion was made before the Committee on Rules in the House of Representatives to clarify that the printing, distribution, or public reading of the Bible was not prohibited by any provision of the proposed bill. The motion was defeated.

74. In April 2009, during a session of the House Judiciary Committee in which the Hate Crimes Act was considered, Congresswoman Sheila Jackson-Lee reinforced the notion that people could be prosecuted under the Act for holding a particular belief. Congresswoman Jackson-Lee publicly stated, “We also need to protect those potential victims who may be the recipients of hateful words or hateful acts, or even violent acts.”

75. Other legislators who support the Hate Crimes Act have indicated that pastors, such as Plaintiffs Yuille, Ouellette, and Combs, could be prosecuted for speech that incites or induces other persons to commit violence under the Act. For example, the following question was posed in the House Judiciary Committee: “[I]f a minister preaches that sexual relations outside of marriage of a man and woman is wrong, and somebody within that congregation goes out and does an act of violence, and that person says that that minister counseled or induced him

through the sermon to commit that act, are you saying under your amendment that in no way could that ever be introduced against the minister?" A congressional supporter of the Hate Crimes Act responded bluntly, "No."

**E. No Basis in Fact or Law for Enacting § 249(a)(2) of the Hate Crimes Act.**

76. Compassion for victims of violent crime and the desire to prevent senseless acts of violence, while emotionally compelling, do not provide Congress with the authority to enact legislation such as § 249(a)(2) of the Hate Crimes Act. Congress' power is limited by the United States Constitution.

77. The perpetrators of the heinous and violent criminal acts against Matthew Shepard, for whom the Hate Crimes Act was named in part, were subject to more severe criminal penalties under existing State criminal law than under the newly-minted Hate Crimes Act.

78. There is evidence demonstrating that the senseless and brutal attack on Matthew Shepard was not motivated by hate or "bias"; rather, it was motivated by money and drugs.

79. The real purpose for § 249(a)(2) of the Hate Crimes Act is not the defense of human beings from violent crime; there are already laws against that, and Matthew Shepard's murderers were successfully prosecuted to the fullest extent of the law in a State with no hate crimes law at the time.

80. Persons who commit violent criminal acts, regardless of the "bias" or motive for the crime, are rightfully subject to severe criminal penalties in all fifty States of the United States under existing State criminal law.

81. Defendant Holder, who supported the passage of the Hate Crimes Act, was asked by Senator Orrin Hatch in a hearing whether there was any evidence of a trend that "hate crimes"

were going unpunished at the State level, and Defendant Holder stated without reservation that there was no such evidence and that, in fact, States were, by and large, doing a fine job in this area.

82. The real purpose for § 249(a)(2) of the Hate Crimes Act is to deter, inhibit, chill, and punish thought, beliefs, and speech, particularly since the proscribed violent act is already severely punished under existing State criminal law.

83. Congress made the following findings related to § 249(a)(2) of the Hate Crimes Act: “(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem. (2) Such violence disrupts the tranquility and safety of communities and is deeply divisive. (3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance. (4) Existing Federal law is inadequate to address this problem. (5) A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected. (6) Such violence substantially affects interstate commerce in many ways, including the following: (A) The movement of members of targeted groups is impeded, and members of such groups are forced to move across State lines to escape the incidence or risk of such violence. (B) Members of targeted groups are prevented from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity. (C) Perpetrators cross State lines to

commit such violence. (D) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence. (E) Such violence is committed using articles that have traveled in interstate commerce. \* \* \* (9) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes. (10) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States, local jurisdictions, and Indian tribes.”

84. Congress’ findings are self-contradictory and lack support in fact.

85. Section 249(a)(2) of the Hate Crimes Act does not regulate the channels of interstate commerce.

86. Section 249(a)(2) of the Hate Crimes Act does not regulate the instrumentalities of interstate commerce.

87. Section 249(a)(2) of the Hate Crimes Act does not regulate persons or things in interstate commerce.

88. Section 249(a)(2) of the Hate Crimes Act does not regulate activities that substantially affect interstate commerce.

89. Section 249(a)(2) of the Hate Crimes Act is a criminal statute that by its terms has nothing to do with commerce.

90. The primary purpose of § 249(a)(2) of the Hate Crimes Act is not to reduce “hate crimes” against persons who engage in homosexual behavior or “transgendered” persons (laws against violent acts are already in place in all fifty States), but rather to establish “sexual orientation” and “gender identity” as specially protected classifications under federal law.

91. According to statistics gathered by the National Coalition of Anti-Violence Programs (NCAVP), a homosexual advocacy group, during the 1999 to 2003 time period, “homosexuals” were 244% more likely to be the perpetrators of violence against other “homosexuals” than were heterosexuals. Similar studies from other organizations reach a similar conclusion: the greatest threat of violence to “homosexuals” comes from other “homosexuals.”

92. In 2007, the FBI reported over 1.4 million violent crimes committed throughout the entire United States. Out of this total, only 247 crimes were considered “bias” motivated on account of the victim’s sexual orientation.

93. In 2008, the FBI reported approximately 1.38 million violent crimes committed throughout the entire United States. Out of this total, only 243 crimes were considered “bias” motivated on account of the victim’s sexual orientation.

94. Consequently, less than 1% of all violent crimes committed throughout the entire United States each year are “bias” motivated on account of the victim’s sexual orientation.

95. As a result, § 249(a)(2) of the Hate Crimes Act, which was promoted by homosexual activists and sponsored by legislators who seek to garner their political support, is more about promoting the homosexual agenda and marginalizing Biblical teachings against sexual immorality than it is about protecting people from acts of violence.

96. Section 249(a)(2) of the Hate Crimes Act is legislation that purports to suppress violent crime and vindicate its victims.

97. There is no better example of the police power, which the Founders denied Congress and reposed in the States, than the suppression of violent crime and the vindication of its victims.

98. The link between the activity proscribed by § 249(a)(2) of the Hate Crimes Act and interstate commerce is so attenuated that it places no real limit on Congress' power to regulate.

99. Section 249(a)(2) of the Hate Crimes Act interferes with the rights of State and local governments to exercise the police powers entrusted to them by the United States Constitution.

100. Section 249(a)(2) of the Hate Crimes Act purports to regulate local, noneconomic criminal activity, it lacks a sufficient nexus to interstate commerce, and it involves the federal government in an area of traditional local concern.

101. Congress lacked authority under the United States Constitution to enact § 249(a)(2) of the Hate Crimes Act.

### **FIRST CLAIM FOR RELIEF**

#### **(First Amendment—Freedom of Speech)**

102. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

103. By reason of the aforementioned § 249(a)(2) of the Hate Crimes Act, which was created, adopted, and enforced under the color of federal law and authority, Defendant has deterred, inhibited, and chilled the exercise of Plaintiffs' right to freedom of speech in violation of the First Amendment to the United States Constitution.

104. Section 249(a)(2) of the Hate Crimes Act is unconstitutionally vague and overbroad in violation of the First Amendment.

105. As a direct and proximate result of Defendant's violation of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

**SECOND CLAIM FOR RELIEF**

**(First Amendment—Expressive Association)**

106. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

107. By reason of the aforementioned § 249(a)(2) of the Hate Crimes Act, which was created, adopted, and enforced under the color of federal law and authority, Defendant has deterred, inhibited, and chilled the exercise of Plaintiffs' right to expressive association in violation of the First Amendment to the United States Constitution.

108. As a direct and proximate result of Defendant's violation of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

**THIRD CLAIM FOR RELIEF**

**(First Amendment—Free Exercise of Religion)**

109. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

110. By reason of the aforementioned § 249(a)(2) of the Hate Crimes Act, which was created, adopted, and enforced under the color of federal law and authority, Defendant has deprived Plaintiffs of their right to religious exercise in violation of the Free Exercise Clause of the First Amendment.

111. Defendant further violated Plaintiffs' right to the free exercise of religion by targeting their religious beliefs for arbitrary and discriminatory enforcement and sanctions under § 249(a)(2) of the Hate Crimes Act.

112. As a direct and proximate result of Defendant's violation of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Fifth Amendment—Equal Protection)**

113. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

114. By reason of the aforementioned § 249(a)(2) of the Hate Crimes Act, which was created, adopted, and enforced under the color of federal law and authority, Defendant has deprived Plaintiffs of the equal protection of the law guaranteed under the Fifth Amendment to the United States Constitution by targeting Plaintiffs for disfavored treatment on account of Plaintiffs' religious viewpoint on homosexuality and the homosexual agenda.

115. Persons who encourage, support, or promote the homosexual agenda in their speech and activities are not subject to federal criminal investigations, prosecution, punishment, and sanctions under § 249(a)(2) of the Hate Crimes Act whereas those who express the opposite viewpoint on account of their religious beliefs, such as Plaintiffs, are subject to such investigations, prosecution, punishment, and sanctions under the Act in violation of the equal protection of the law guaranteed under the Fifth Amendment.

116. By creating special rights, protections, and recognition for some American citizens under federal law while denying those rights, protections, and recognition to others

based on irrational classifications, § 249(a)(2) of the Hate Crimes Act violates the equal protection of the law guaranteed under the Fifth Amendment.

117. Congress had no rational basis to provide special rights, protections, and recognition under federal law for some American citizens while denying those rights, protections, and recognition to others based on the person's actual or perceived sexual orientation or gender identity.

118. As a direct and proximate result of Defendant's violation of the Fifth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Commerce Clause)**

119. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

120. Congress exceeded its authority under the United States Constitution, including its authority under the Commerce Clause, by enacting § 249(a)(2) of the Hate Crimes Act.

121. As a direct and proximate result of Defendant's violation of the United States Constitution, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

#### **SIXTH CLAIM FOR RELIEF**

##### **(Tenth Amendment)**

122. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

123. The Tenth Amendment to the United States Constitution states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

124. The “power” to enact § 249(a)(2) of the Hate Crimes Act was “not delegated” to Congress by the United States Constitution. Consequently, the power to enact legislation such as § 249(a)(2) of the Hate Crimes Act is specifically reserved by the United States Constitution to the States pursuant to their inherent police powers. Pursuant to the Tenth Amendment, Congress was without authority to enact § 249(a)(2) of the Hate Crimes Act.

125. As a direct and proximate result of Defendant’s violation of the Tenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court:

- A) to declare that § 249(a)(2) of the Hate Crimes Act violates the First, Fifth, and Tenth Amendments to the United States Constitution as set forth in this Complaint;
- B) to declare that Congress lacked the power and authority to enact § 249(a)(2) of the Hate Crimes Act under the United States Constitution as set forth in this Complaint;
- C) to permanently enjoin § 249(a)(2) of the Hate Crimes Act and/or its application to Plaintiffs’ speech and related activities as set forth in this Complaint;
- D) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 28 U.S.C. § 2412 (the Equal Access to Justice Act), and other applicable law;
- E) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)