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**Statement for the Record  
of the  
National Coalition for the Homeless**

**to the  
Committee on the Judiciary  
United States Senate**

**Hearing on  
*The Matthew Shepard Hate Crimes  
Prevention Act of 2009***

**June 25, 2009**

## **INTRODUCTION**

The National Coalition for the Homeless is pleased to submit a statement for the record to the Committee on the Judiciary of the United States Senate at its hearing on the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909).

The National Coalition for the Homeless (NCH), founded in 1982, is a national network of people who are currently experiencing or who have experienced homelessness, activists and advocates, community-based and faith-based service providers, and others committed to a single mission. That mission, our common bond, is to end homelessness. We are committed to creating the systemic and attitudinal changes necessary to prevent and end homelessness. At the same time, we work to meet the immediate needs of people who are currently experiencing homelessness or who are at risk of doing so. We take as our first principle of practice that people who are currently experiencing homelessness or have formerly experienced homelessness must be actively involved in all of our work.

### **NCH Public Policy Recommendation on Federal Hate Crimes Statutes**

The National Coalition for the Homeless strongly supports current federal hate crimes statutes. They are one of the civil rights pillars in this nation. Furthermore, NCH enthusiastically endorses the Matthew Shepard Hate Crimes Prevention Act (S. 909) and companion legislation approved by the U.S. House of Representatives, the Local Law Enforcement Hate Crimes Prevention Act (H.R. 1913). We commend those lawmakers, advocates, and thousands of concerned citizens who have fought tirelessly for over a decade to bring the Hate Crimes Prevention Act to the cusp of enactment. The Hate Crimes Prevention Act takes a leap forward in civil rights policy by extending the reach of federal hate crimes statutes to additional people vulnerable to intentional selection for crimes against them or their property due to their socially recognizable status characteristics.

The National Coalition for the Homeless urges Congress to include people experiencing homelessness as a status group in federal hate crime statistics and enforcement statutes. Further, we recommend that Congress use the Hate Crimes Prevention Act as the vehicle for accomplishing this addition. It is long overdue that people experiencing homelessness be included in federal hate crimes laws. There is no substantive rationale why their addition can not be accomplished through the Hate Crimes Prevention Act – legislation Congress is using to open the federal law to add other status categories.

### **The Intersection of Homelessness and Hate Crimes**

“Hate crimes” are criminal offenses committed against a person, property, or society which are motivated, in whole or in part, by the offender’s bias against a certain class of people. In many cases, perpetrators of hate crimes do not know their victims personally and they do not seek material gain or vengeance; their actions are intended only to intimidate or dehumanize. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents; hate crimes leave a special emotional and psychological mark on victims and their communities, leaving them feeling isolated, vulnerable, and unprotected by the law.

Sadly, but with a great body of evidence to buttress the assertion, people experiencing homelessness have been selected and are continuing to be selected intentionally as victims of crime due to their status as homeless.

The National Coalition for the Homeless commenced tracking of unprovoked, bias-motivated crimes against people experiencing homelessness in the late 1990s, in response to anecdotal testimony from homeless people and their advocates that such crimes were increasing in both number and intensity. Since 1999, NCH and the National Law Center on Homelessness & Poverty have published annual reports on the extent and characteristics of hate-motivated violent attacks against people experiencing homelessness. Cumulatively, NCH and NLCHP have documented over 700 such attacks, with over 200 of those attacks resulting in death—an extremely high mortality rate when compared to hate-motivated homicides of individuals in currently protected categories of victims combined. Victims included men and women, veterans, children as young as four, youth, and elders. Though our statistics are troubling, they do not represent the full extent of the criminality, as countless acts of violence against people experiencing homelessness go unnoticed or unreported, and moreover due to the lack of this population’s inclusion in the federal system for collecting and reporting hate crimes.

The decennial edition of our annual report, *Hate, Violence, and Death on Main Street USA: A Report on Hate Crimes and Violence Against People Experiencing Homelessness, 2008*, scheduled for release later this summer, will offer yet another year of chilling evidence that people experiencing homelessness are being targeted for crime due to no other motivation than animus against them. Among the homeless hate crimes to be reported in the 2008 decennial edition:

### **October 9, 2008**

LOS ANGELES—John Robert McGraham, 55, a homeless man, was drenched in gasoline and set on fire at 9:30 p.m. on the side of the road on 3<sup>rd</sup> Street in the Mid-Wilshire area. He was brought to a hospital and then pronounced dead. Benjamin Martin, 30, was linked to the murder by DNA evidence and witness accounts. Deputy Chief Charlie Beck commented on Martin’s motive saying Martin had, “straight-up personal dislike and a little bit of crazy” toward homeless people. McGraham, or simply “John,” as he was known to many in the community was said to have never bothered anyone and rarely asked for money, according to the Los Angeles Times. On the evening of Sunday, October 12, a group of 200 plus people gathered at the spot where McGraham was killed and created a memorial for him at the site.

### **June 25, 2008**

CLEVELAND—At least three teenagers brutally beat Anthony Waters, 42, in Cleveland, Ohio on June 25, 2008. Waters was on his way to visit his mother who lives in the area, taking side streets because he feared harassment from local residents. A security camera outside G&M Towing Company, where the beating took place, caught passing cars slowing down as they saw Waters being attacked, but nobody stopped to help until employees at G&M ran to Waters’ aid. Waters’ mother, Joyce Watkins, said that her son has been battling alcoholism and that he often stayed at a men’s shelter near her house, but that they always stayed in contact with each other. “He may have been hurting himself with his drinking, but he would never do anything to hurt another person,” his mother said. “This is ridiculous and I can’t understand why they would beat him like that. My heart

is broken.” Lt. Thomas Stacho, a Cleveland Police Department spokesman, said that the attackers appeared to be between the ages of 13-18 and all wore white shirts. Waters suffered a lacerated spleen and broken ribs. He later died at a hospital.

### **December 24, 2008**

WASHINGTON, D.C.—Yoshio Nakada, 61, was murdered in his sleep this Christmas Eve. With chop wounds splitting his fractured skull, it is believed Nakada suffered blows to the head from a hatchet. Often characterized as “sweet in nature” and “sweetest of all people,” Nakada was found dead due to head injuries near the Watergate complex in Washington, D.C. Of the 2,859 recorded homeless individuals in the D.C. area, 34 percent say they have fallen victim to some type of violent crime.

Crimes against people experiencing homelessness such as documented above are rightly understood to be hate crimes, and accordingly should be classified as such for purposes of hate crime data collection and for enhanced penalties at sentencing.

Hate crimes laws have proven measurably effective in tracking the frequency and nature of bias-motivated crimes and in providing a deterrent to individuals who wish to commit them. Current federal hate crimes laws were passed before the phenomenon of homeless-victim hate crimes was well understood. Now that ten years of documentation of such crimes through community-based data collection and media reporting points to a clear and growing problem, Congress should act to prevent additional hate-motivated violence by adding people experiencing homelessness to federal hate crimes statutes.

U.S. Representative Eddie Bernice Johnson (D-Texas) has sought to do just that. In the 110<sup>th</sup> Congress, Representative Johnson offered for consideration the Hate Crimes Against the Homeless Statistics Act (H.R. 2216) and the Hate Crimes Against the Homeless Enforcement Act (H.R. 2217). The former would direct the Civil Rights Division of the Federal Bureau of Investigation to monitor and collect data from law enforcement agencies on hate crimes against homeless individuals and to include that data in their annual report. The latter would add “homeless status” as a protected class under existing hate crimes statute for the purpose of law enforcement. Earlier this year, Representative Johnson offered amendments to add homeless status to the Local Law Enforcement Hate Crimes Prevention Act of 2009 (H.R. 1913) before that bill came to a vote in the House of Representatives. Regrettably, the Rules Committee did not accept any floor amendments to the legislation. NCH thanks Representative Johnson for her continued leadership on this issue.

Support exists across the civil rights community for the addition of people experiencing homelessness to federal hate crimes statistics and enforcement statutes. Over 150 national, state, and local organizations representing a broad spectrum of constituency groups, including many organizations representing populations currently protected under current hate crimes law or proposed for protection by the Hate Crimes Prevention Act have endorsed a joint position statement on the need for a public policy response to hate-motivated crime against homeless individuals. Among the endorsers are NAACP, the National Council of La Raza, the Southern Poverty Law Center, the National Gay and Lesbian Task Force, the United States Veterans Initiative, the National Council of

Jewish Women, Presbyterian Church USA, United Methodist Church, and a number of community-based homeless groups and local faith-based organizations.

In May 2009, Maryland became the first state to protect homeless individuals under state hate crimes statute. Similar legislation is pending in California, the District of Columbia, Florida, and Texas.

## **RESPONSE TO THE “MUTABILITY” ARGUMENT**

Though NCH’s effort to extend federal hate crimes protections to homeless victims has gained the support of national, state, and local organizations representing a thorough cross-section of the civil rights community, an isolated few argue that people experiencing homelessness should continue to be excluded from hate crimes statutes because their status is mutable.

The first and most obvious refutation of this argument is that the current list of protected classes already includes a characteristic that is unquestionably mutable: religion. While in many cases one’s religion is closely tied to one’s ethnicity, a far less mutable trait, in today’s society religious conversion is a regular feature of the cultural landscape. The inclusion in current law of protections for religious victims is an acknowledgement by the federal government that often people are targeted for discrimination and violence based on mutable traits, as well. The fact that one’s religion can be altered does not make it less worthy of statutory protection. Moreover, while homeless status is indeed a mutable quality, it is not one that can be changed on a whim; it can often take weeks, months, or even years for a homeless person to reverse their unhoused status.

Furthermore, mutability itself has never been a preclusive factor for the inclusion of a group in civil rights laws. The Fourteenth Amendment, a significant and more rigid precursor to modern civil rights statutes, was itself left open-ended and not limited specifically to immutable characteristics, like race. Since that time, the judicial and legislative record is quite clear that governments have wide authority to enact civil rights protections beyond merely immutable characteristics. The main reasons for coverage under civil rights laws are, and always have been, an increased risk of victimization and discriminatory victim selection.

## **CONCLUSION**

Hate-motivated physical violence or property damage is a threat that people experiencing homelessness persistently face and fall victim. While NCH and NLCHP’s annual reports on the subject, dating back to 1999, provide extensive documentation of instances of bias-motivated violence against the homeless, they record only a fraction of the many cases of discrimination, harassment, selective enforcement, and violence that so often are ignored or unreported. In the unanimous decision on the 1993 Supreme Court case *Wisconsin v. Mitchell*, Chief Justice William Rehnquist wrote, “Bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.” Those words ring true to people experiencing homelessness for whom threat of attack is a daily concern.

The National Coalition for the Homeless urges Congress to recognize that our recommendation to add people experiencing homelessness to federal hate crimes statutes is in keeping with the spirit and history of the civil rights movement. After a decade of struggle, it may take many years more for Congress to take up another hate crimes measure. In the meantime, there is no telling how many more homeless people will be subject to brutal, hate-motivated attacks. Accordingly, we urge that the Hate Crimes Prevention Act be amended to include people experiencing homelessness before the legislation is passed by Congress and enacted into law.