

## **Advisory Memorandum**

**To:** U.S. Commission on Civil Rights  
**From:** Rhode Island Advisory Committee to the U.S. Commission on Civil Rights  
**Date:** June 11, 2019  
**Subject:** Advisory Memorandum on Hate Crimes in Rhode Island

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The Rhode Island State Advisory Committee to the United States Commission on Civil Rights (Committee), in support of the Commission's project on hate crimes, held a briefing on June 11, 2019. The Committee sought to learn about the effectiveness of the current legislation in place to track, report, and combat hate crimes within Rhode Island. The agenda is attached as the Appendix. This Advisory Memorandum highlights the information the Committee learned at the briefing.\*

### **Background**

A hate crime is criminal behavior targeted at an individual because of his or her real or perceived association with personal characteristics that are protected under civil rights law. The United States Federal Bureau of Investigation (FBI) defines a hate crime as a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, ethnic origin, or sexual orientation."<sup>1</sup>

### **1. Hate Crimes Nationally**

The Civil Rights Act of 1968 ("Civil Rights Act") was a momentous statute that criminalized a new class of hate motivated acts.<sup>2</sup> The Civil Rights Act sought to address racial violence against civil rights workers and individuals pursuing federally protected activities. The Civil Rights Act permits federal prosecution of any person who willfully injures, intimidates, or interferes with another person, or attempts to do so, by force because of the victim's race, color, religion, or national origin, provided that the offense occurred while the victim was attempting to engage in a statutorily protected activity.<sup>3</sup> Examples of statutorily protected activities under the Civil Rights Act include voting; enrolling in or attending any institution of public education; applying for or enjoying employment by any private or public employer; and enjoying the benefits or services of any establishment of public accommodation such as hotels, restaurants, movie theaters, and sports arenas.<sup>4</sup> Importantly, the Civil Rights Act did not designate as a hate crime offenses that

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\* The Committee expresses its appreciation to Patrick Williamson, Georgetown Law Student and the Eastern Regional Office Intern, for his work on this advisory memorandum.

<sup>1</sup> FED. BUREAU OF INVESTIGATION, *Hate Crimes Overview*, <https://www.fbi.gov/investigate/civil-rights/hate-crimes>. (last visited Sept. 30, 2019). A criminal offense or crime is any act or omission in violation of a law prohibiting the action or omission. See generally, LEGAL INFO. INSTITUTE, CORNELL U. SCH. OF L., *Criminal Law*, [https://www.law.cornell.edu/wex/criminal\\_law](https://www.law.cornell.edu/wex/criminal_law). Each state, and the federal government, decides what sort of conduct to criminalize. Ibid.

<sup>2</sup> The Civil Rights Act of 1968, 18 U.S.C. § 245(b)(2).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

occurred while a victim was not engaged in one of the identified statutorily protected activities. As such, prosecution under the Civil Rights Act often proved difficult.<sup>5</sup>

While advocacy groups such as the Anti-Defamation League, the Southern Poverty Law Center, and the National Gay and Lesbian Task Force began compiling data on bias-motivated violence in the 1980s, official federal data was not collected until 1990 with the passage of the Hate Crimes Statistics Act.<sup>6</sup> The Hate Crimes Statistics Act requires the Attorney General to collect, as a part of the Uniform Crime Reports Program, data “about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity.”<sup>7</sup> In September 1994, the Violent Crime Control and Law Enforcement Act amended the Hate Crimes Statistics Act to add disabilities as a factor that could be considered as a basis for hate crimes.<sup>8</sup> Although the Hate Crimes Statistics Act mandated hate crimes data collection for five years, the FBI considers the collection of such statistics to be a permanent addition to the Uniform Crime Reports Program.

Also included as part of the Violent Crime Control and Enforcement Act of 1994, the Hate Crime Sentencing Enhancement Act<sup>9</sup> mandated a revision of United States Sentencing Guidelines to provide sentencing enhancements of at least three offense levels for hate crime offenses. The Hate Crime Sentencing Enhancement Act included protection for those targeted because of their ethnicity, gender, disability, or sexual orientation, in addition to protecting individuals on the basis of race, color, religion and national origin.<sup>10</sup> Because this sentence enhancement can only be employed when an underlying federal crime is committed, its enactment did not expand the substantive scope of any federal criminal law prohibitions, and it excludes many offenses prosecuted at the state level where hate may be a motive. While the Hate Crime Sentencing Enhancement Act did evoke congressional willingness to address hate crimes, the scope of substantive federal protection remained unchanged.

In 2009, the enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act<sup>11</sup> provided additional authority for federal officials to investigate and prosecute hate crimes. The Hate Crimes Prevention Act closed the loophole in the Civil Rights Act which limited federal hate crime prosecution to cases in which the victim had been engaged in a statutorily protected activity at the time of the crime.<sup>12</sup> The Hate Crimes Prevention Act also authorized the U.S. Department of Justice to investigate and prosecute “certain bias-motivated crimes based on the victim’s actual or perceived sexual orientation, gender, gender identity, or disability.”<sup>13</sup> Finally, the Hate Crimes Prevention Act provided limited jurisdiction “for federal law enforcement officials to investigate certain bias-motivated crimes in states where current law is

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<sup>5</sup> For a successful case using 18 U.S.C. § 245, see *United States v. Nelson*, 277 F.3d 164 (2d Cir. 2002).

<sup>6</sup> Hate Crimes Statistics Act, 34 U.S.C. § 41305.

<sup>7</sup> *Id.*

<sup>8</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796.

<sup>9</sup> *Id.* at 108 Stat. 2096.

<sup>10</sup> *Id.*

<sup>11</sup> Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, §§ 4701-4713, 123 Stat. 2835, 2835-2845 (codified in part at 18 U.S.C. § 249).

<sup>12</sup> ANTI-DEFAMATION LEAGUE, *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA): What You Need to Know*, <http://www.adl.org/assets/pdf/combatting-hate/What-you-need-to-know-about-HCPA.pdf> (last visited Sept. 30, 2019) [hereinafter *HCPA: What You Need to Know*].

<sup>13</sup> *Ibid.*; see also 18 U.S.C. § 249(a)(1)-(2).

inadequate” and provided federal aid and technical assistance to state, local, and tribal jurisdictions to help them more effectively investigate, prosecute, and prevent hate crimes from occurring.<sup>14</sup>

## **2. Hate Crimes in Rhode Island**

### *Background*

Although hate crimes have generally decreased in Rhode Island since 2009, State Police reported fourteen had occurred in 2018.<sup>15</sup> This is an increase from twelve in 2016 and eleven in 2017. Of those fourteen reported last year, six were attributed to the victim’s race or ethnicity, five were based on sexual orientation, and three on religion.<sup>16</sup> Some critics believe that hate crimes are generally undercounted due to a lack of reporting by and to police departments.<sup>17</sup> Although police are required by law to report hate crimes, only nine of forty-seven municipalities reported any occurrences in 2018, and two of the largest cities in the state, Cranston and Warwick, reported none.<sup>18</sup>

In the last several years, local and state-wide news outlets have reported on multiple hate motivated crimes.. In 2015, the Islamic School of Rhode Island in West Warwick was vandalized. Photos of the crime showed expletives referring to Allah and the phrase “now this is a hate crime,” spray painted on the doors of the school.<sup>19</sup> This was followed by a crime in 2016 in which vandals broke in to a Providence youth center that serves Southeast Asian LGBTQ youth and strung a noose from the ceiling.<sup>20</sup>

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<sup>14</sup> Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, §§ 4701-4713, 123 Stat. 2835, 2835-2845 (codified in part at 18 U.S.C. § 249 ()). See also ANTI-DEFAMATION LEAGUE, *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA): What You Need to Know*, <http://www.adl.org/assets/pdf/combating-hate/What-you-need-to-know-about-HCPA.pdf> (last visited Sept. 30, 2019) [hereinafter HCPA: *What You Need to Know*].

<sup>15</sup> EXEC. DIV. OF THE R.I. STATE POLICE, UNIFORM CRIME REPORT 270 (2018) (hereafter “R.I. UNIFORM CRIME REPORT”), <http://risp.ri.gov/documents/UCR/2018.pdf>.

<sup>16</sup> Ibid., 272.

<sup>17</sup> Jaweed Kaleem, *FBI Reports Spike in Hate Crimes in 2017*, PROVIDENCE J. (Nov. 13, 2018)(quoting Jack Levin, criminologist at the Brudnick Center on Violent and Conflict at Northeastern University as saying “The FBI vastly undercounts hate crimes . . . The problem is that every year different jurisdictions report.”), [https://www.providencejournal.com/news/20181113/fbi-reports-spike-in-hate-crimes-in-2017?template=ampart;Ibid. \(quoting Brian Levin, director of the Center for the Study of Hate and Extremism at Cal State San Bernardino as saying “Each year, you’ll see big cities that don’t report to the FBI or report zero hate crimes.”\)](https://www.providencejournal.com/news/20181113/fbi-reports-spike-in-hate-crimes-in-2017?template=ampart;Ibid. (quoting Brian Levin, director of the Center for the Study of Hate and Extremism at Cal State San Bernardino as saying “Each year, you’ll see big cities that don’t report to the FBI or report zero hate crimes.”)).

<sup>18</sup> R.I. UNIFORM CRIME REPORT, *supra* note 15, at 273-78.

<sup>19</sup> Jennifer Bogdan, *Islamic School of Rhode Island Vandalized*, PROVIDENCE J. (Feb. 15, 2015), <https://www.providencejournal.com/article/20150215/NEWS/150219457>.

<sup>20</sup> Dan Avery, *Vandals Break in to Queer Youth Center in Rhode Island, String Up Noose*, LOGO: NEWNOWNEXT, (Dec. 12, 2016), [http://www.newnownext.com/vandals-break-into-queer-youth-center-in-rhode-island-string-up-noose/12/2016/?fb\\_ref=fbshare\\_web](http://www.newnownext.com/vandals-break-into-queer-youth-center-in-rhode-island-string-up-noose/12/2016/?fb_ref=fbshare_web).

## *Hate Crimes Laws in Rhode Island*

Rhode Island state law regards hate crimes as any crime motivated by the offender's prejudice or animus towards a victim that is a member of a protected group.<sup>21</sup> Offenders that commit such crimes are subject to increased penalties under the Hate Crime Sentencing Act. Specifically, the law provides:

If any person has been convicted of a crime charged by complaint, information, or indictment in which he or she intentionally selected the person against whom the offense is committed or selected the property that is damaged or otherwise affected by the offense because of the actor's hatred or animus toward the actual or perceived disability, religion, race, national origin or ancestry, sexual orientation, or gender of that person or the owner or occupant of that property, he or she shall be subject to penalties provided [by the Hate Crimes Sentencing Act].<sup>22</sup>

Although people accused of committing hate crimes are typically criminally prosecuted, any victim of alleged acts that are intended to harass or intimidate someone based on their race, religion, or national origin may bring a civil suit for compensatory damages against the offender.<sup>23</sup> Further, Rhode Island courts have the discretion to issue injunctions regarding future acts by the defendant.<sup>24</sup>

Collection of data on hate crimes by state police is mandatory under Rhode Island law.<sup>25</sup> Section 42-28-46 of Title 42 further requires all police departments in the state to report occurrences of hate crimes motivated by the factors listed in the Hate Crime Sentencing Act, as well as gender identity, to state police. This provision provides procedures regarding data collection as follows:

The state police shall maintain a permanent record of [hate crimes] categorized by community of occurrence, type or offense, target of offense, and such other information as the department deems relevant. The department shall develop a plan for collection, analysis and dissemination of data regarding such crimes and shall promulgate regulations relating to the collection of hate crime data...which are submitted by law enforcement agencies, individuals, state and local human rights commissions, and anti-discrimination advocacy organizations.<sup>26</sup>

In addition to hate crime reporting requirements, Rhode Island has established a Commission on Standards and Training to form policies and procedures for certification and training of state and municipal police personnel.<sup>27</sup> The commission is charged with preparing standards to provide instruction to police officers in identifying, responding to, and reporting incidents of hate crimes.<sup>28</sup>

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<sup>21</sup> Hate Crimes Sentencing Act, 12 R.I. GEN. LAWS § 12-19-38.

<sup>22</sup> *Id.*

<sup>23</sup> 9 R.I. GEN. LAWS § 9-1-35(a).

<sup>24</sup> *Id.*

<sup>25</sup> 42 R.I. GEN. LAWS § 42-28-46(b).

<sup>26</sup> *Id.*

<sup>27</sup> 42 R.I. GEN. LAWS § 42-28.2-8.

<sup>28</sup> *Id.* at § 42-28.2-8.1.

## **Assertions and Themes from the June 11, 2019 Briefing**

### **1. Underreporting of Hate Crimes**

Nationally, 13 percent of law enforcement agencies reported a single hate crime in 2017.<sup>29</sup> Over 82 cities with populations over 100,000 were among those that reported none.<sup>30</sup> Many critics believe this indicates underreporting of hate crimes.<sup>31</sup> Rhode Island appears to generally follow this trend with only nine of the state's forty-seven municipalities, roughly nineteen percent, reporting any occurrences of hate crimes in 2018.<sup>32</sup> Several major jurisdictions such as Warwick, Cranston, East Providence, North Providence, and Woonsocket were among those reporting zero hate crimes.<sup>33</sup> Many of the following assertions and themes from the Committee's briefing on hate crimes contribute to or impact the reporting and underreporting of these crimes. Several issues were discussed in the briefing that may have an impact on underreporting such as barriers to reporting for victims,<sup>34</sup> an inadequate statutory framework of hate crime laws,<sup>35</sup> and a lack of proper educational and training initiatives.<sup>36</sup>

### **2. Barriers to Reporting**

Victims of hate crimes may face significant difficulty in reporting them to authorities for a variety of reasons. This issue impacts statewide data and the ability of Rhode Island law enforcement and policy makers to fully comprehend the breadth of this issue in the state. For example, immigrants, particularly those that are undocumented, face significant barriers to reporting hate crimes.<sup>37</sup> Regardless of the underlying reason for the crime—race, citizenship status, gender, or sexual orientation—these victims are often precluded from reporting these crimes because doing so could jeopardize their own status in the United States.<sup>38</sup> The same issue applies to various populations who may risk their own personal safety by reporting a hate crime.<sup>39</sup>

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<sup>29</sup> Robert Trestan, *Briefing before the Rhode Island State Advisory Committee to the U.S. Commission on Civil Rights*, Providence, RI, June 11, 2019, transcript, p. 4 (hereafter *Hate Crime Briefing*).

<sup>30</sup> Ibid.

<sup>31</sup> Jaweed Kilma, *supra* note17.

<sup>32</sup> R.I. UNIFORM CRIME REPORT, *supra* note 15, at 273-78.

<sup>33</sup> Trestan Testimony, *Hate Crime Briefing*, p. 4.

<sup>34</sup> See Gaines Testimony, *Hate Crime Briefing*, pp. 11-12.

<sup>35</sup> See Trestan Testimony, *Hate Crime Briefing*, pp. 5-6.

<sup>36</sup> Ibid., p. 6.

<sup>37</sup> Gaines Testimony, *Hate Crime Briefing*, p. 12.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

### **3. The LGBTQ Community and Hate Crimes**

Nationally, transgender and non-conforming people were the victims of at least 131 hate crime offenses in 2017, the latest year for which the FBI has data.<sup>40</sup> Many jurisdictions in the United States have included gender identity as a protected category under their hate crime legislation.<sup>41</sup> Rhode Island law does include gender identity in the statutory definition of a hate crime for purposes of reporting,<sup>42</sup> however, in its current form, state law does not provide a sentencing enhancement for crimes motivated by hatred or animus towards the victim's actual or perceived gender identity.<sup>43</sup> Failing to include the transgender community in this statutory framework fails to provide protection to a class that is subjected to a significant number of hate crimes. Further, this may possibly contribute to underreporting because "victims are far more likely to report a hate crime if they believe that police are ready and able to respond effectively, and take them seriously."<sup>44</sup>

### **4. Education Initiatives**

While criminal penalties and civil recourse are important in combatting hate crimes, education is an integral aspect to combatting bigotry, bias, and ultimately preventing crimes of this nature. A holistic approach to combatting bias motivated crimes should include an education component, both in the form of anti-bias education in schools,<sup>45</sup> and education on the rights of victims and avenues to report hate crimes.<sup>46</sup>

Anti-bias and anti-bullying education and training in schools is an effective method for combatting hate related incidents and preventing bigotry and bias.<sup>47</sup> The Anti-Defamation League proposed that Rhode Island strengthen its anti-bullying policy to include mandatory training on bullying for students and teachers.<sup>48</sup> Further, the ADL suggested that anti-bias education for students be adopted in Rhode Island. They view this education as "the best way to combat hatred and bigotry in all of its forms[.]"<sup>49</sup>

Educating the general public on their rights and how to access justice when they are victimized is another powerful tool to combat underreporting and ensure proper recourse is obtained after a bias motivated crime occurs. One panelist expressed anecdotal

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<sup>40</sup> FED. BUREAU OF INVESTIGATION, *2017 Hate Crime Statistics*, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/tables/table-1.xls> (accessed Sept. 30, 2019).

<sup>41</sup> *State Maps of Laws & Policies*, Human Rights Campaign, <https://www.hrc.org/state-maps/hate-crimes> (accessed July 22, 2019).

<sup>42</sup> 42 R.I. GEN. LAWS § 42-28-46(a)(2).

<sup>43</sup> 12 R.I. GEN. LAWS § 12-19-38.

<sup>44</sup> Trestan Testimony, *Hate Crime Briefing*, p. 4.

<sup>45</sup> Ibid., 6.

<sup>46</sup> See Evora Testimony, *Hate Crime Briefing*, p. 36.

<sup>47</sup> Trestan Testimony, *Hate Crime Briefing*, p. 6.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

evidence that discrimination reporting generally has increased after education or awareness events have occurred, suggesting that these methods empower victims to seek help and justice.<sup>50</sup>

## 5. Law Enforcement Training

Law enforcement officers in Rhode Island are required to receive training on identifying, responding to, and reporting hate crimes.<sup>51</sup> One panelist suggested that this training, however, should include a component on the special nature of hate crimes as well as the unique legal framework in which these crimes exist.<sup>52</sup> In order to meaningfully address the challenges brought by these offenses, police must understand their role in combatting, reporting, and tracking them.<sup>53</sup> Further, panelists expressed a need for education on bigotry and bias to be expanded into other areas of police training.<sup>54</sup> Including this information on hate related issues in the context of other facets of law enforcement may help officers better identify and handle all circumstances related to bigotry and bias.

The statutory framework of hate crime laws, particularly data collection, relies on police to properly identify and report these crimes. Failing to do so is yet another barrier to obtaining complete and accurate data. Misconceptions on what can and cannot be reported may be contributing to undercounting hate crimes in Rhode Island.<sup>55</sup> One panelist stressed the importance of ensuring that officers know that any case that fits the statutory definition of a hate crime, even if it is unsolved or does not lead to an arrest, should be reported.<sup>56</sup> Ensuring that all cases are reported, including those that do not lead to arrest or remain unresolved, is essential to tracking and understanding the broader picture of bigotry and bias in Rhode Island.

## 6. Inclusion of Associational Crimes

An all-encompassing approach to combatting hate crimes, as suggested by the ADL, might also include providing protection against associational hate crimes. These are offenses in which the victims themselves are not targeted based on their protected characteristics, but rather because of their association with a person with protected characteristics.<sup>57</sup> One panelist provided several examples of how this may occur to highlight its importance. For example, “a white woman...is attacked, not because of her race, but because she is dating, or has a partner of color.”<sup>58</sup> Another example provided

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<sup>50</sup> See Evora Testimony, *Hate Crime Briefing*, p. 36.

<sup>51</sup> Trestan Testimony, *Hate Crime Briefing*, p. 6.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> See, e.g., Gaines Testimony, *Hate Crime Briefing*, p. 34.

<sup>55</sup> Moreira Testimony, *Hate Crime Briefing*, p. 23.

<sup>56</sup> Ibid.

<sup>57</sup> Trestan Testimony, *Hate Crime Briefing*, p. 5.

<sup>58</sup> Ibid.

during the briefing was a child being targeted because their mother is gay.<sup>59</sup> Rhode Island law does not currently provide any protection for such crimes.

## 7. “Hate Crime Law” is a Misnomer in Rhode Island

Although Rhode Island law does define hate crimes for reporting purposes, one panelist stated that saying Rhode Island has a “hate crime law” is a misnomer.<sup>60</sup> Rhode Island has sentencing enhancement laws which increase the penalty upon a finding beyond a reasonable doubt that the offender committed a *crime* motivated by bigotry and bias.<sup>61</sup> This requires the presence of an underlying crime to receive a penalty enhancement rather than intimidation, harassment or violence based on bigotry and bias being a crime itself.

## 8. Underutilized Efforts to Combat Hate Crimes

The Rhode Island Commission on Prejudice and Bias was established in 1981 to study and report on all forms of prejudice and hatred in the state.<sup>62</sup> However, testimony at our June 2019 briefing suggested that the Rhode Island Commission on Prejudice and Bias may be underfunded,<sup>63</sup> preventing it from maximizing its utility in combatting hate crimes. One panelist noted that the Commission is “a Governor’s Commission and should be taken far more seriously in the form of financial support and legislative representation at our meetings[.]”<sup>64</sup> For example, the Commission attempted to establish a helpline for the sole purpose of hearing complaints of hate crime violations in the state. However, they were unable to achieve this goal due to a lack of funding, ultimately only leaving in place a general Victims of Crime Helpline that is typically associated with being used for reporting sexual assault, domestic violence, and rape.<sup>65</sup>

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<sup>59</sup> Ibid.

<sup>60</sup> Moreira Testimony, *Hate Crime Briefing*, p. 22.

<sup>61</sup> Ibid.

<sup>62</sup> 42 R.I. GEN. LAWS § 42-80-2 to 40-80-5, *see also* Rhode Island Commission on Prejudice and Bias, *About Us, Purpose*, <https://calloutprejudiceri.org/about-us>(accessed Sept. 30, 2019).

<sup>63</sup> Glass Testimony, *Hate Crime Briefing*, p. 30.

<sup>64</sup> Ibid., p. 10.

<sup>65</sup> Ibid., p. 9.

## Appendix



### **Rhode Island Advisory Committee U.S. Commission on Civil Rights**

## **Briefing on Hate Crimes**

Hinckley Allen & Snyder  
100 Westminster Street, #1500, Providence, RI 02903  
Providence, RI

## **AGENDA**

Tuesday, June 11, 2019

### **I. Welcome and Introductions** 12:00 p.m.

### **II. Briefing**

- Channavy Chhay, Executive Director at Center for Southeast Asians
- Michael Evora, RI Commission for Human Rights
- Justice Gaines
- Jodi Glass, Coordinator, RI Commission on Prejudice & Bias
- Ikram ul Haq, Imam, Masjid Al-Islam
- John Moreira, Assistant Attorney General, RI Attorney General's Office
- Robert Trestan, Executive Director, New England Anti-Defamation League

### **III. Public Comment Session**

### **IV. Adjournment**