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## MEMORANDUM

**TO:** House Judiciary Committee

**FROM:** Andy Hoover, Legislative Director

**DATE:** April 27, 2009

**RE: OPPOSITION TO HOUSE BILL 108**

On Tuesday, the House Judiciary Committee is scheduled to consider House Bill 108. This legislation would create a new criminal offense of “using symbols of hatred to intimidate.” In the situations addressed by this bill, the suspect has already committed another crime, and if it can be shown that the crime was motivated by bias, prosecutors and police have the option to charge the suspect under the Ethnic Intimidation Statute. Also, singling out specific forms of expression for criminalization is problematic under free speech principles. For these reasons, the American Civil Liberties Union of Pennsylvania opposes HB 108. On behalf of the 15,000 members of the ACLU of PA, I urge you to please vote “no” on this legislation.

The ACLU of PA appreciates the HB 108 sponsors’ intent. The ACLU played a significant role in the civil rights movement of the 1950s and 1960s. Today we have a Racial Justice Project, an Immigrants’ Rights Project, and a Religion and Belief Project. All of these projects work for civil rights for racial, ethnic, and religious minorities. The ACLU of PA also handles many cases every year that directly support the rights of these and other minorities.

The ACLU of PA does not support criminalizing specific forms of speech but does believe that broader laws against intimidation generally may satisfy the First Amendment and Article I, section 7 of the Pennsylvania Constitution. The existing statutes of vandalism, harassment, arson, criminal mischief, terroristic threats, and ethnic intimidation all potentially cover situations that HB 108 attempts to address.

While this bill specifically addresses burning crosses and swastikas, it could open the door to further criminalizing certain types of expression. The website of the Anti-Defamation League includes a section called “Hate on Display: A Visual Database of Extremist Symbols, Logos and Tattoos.”<sup>1</sup> The ADL lists 70 different graphic symbols that it considers extremist. While the list includes well-known symbols like a noose and the Confederate battle flag, it also includes less-known symbols, including a woodpecker and a spider web. We would hope that no one in the General Assembly will introduce legislation to criminalize the use of a woodpecker or a spider web or even the Confederate

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<sup>1</sup> *Hate on Display* is available at [http://www.adl.org/hate\\_symbols/default.asp](http://www.adl.org/hate_symbols/default.asp).

battle flag to intimidate, but passing HB 108 starts the commonwealth down the path toward criminalizing offensive speech.

We appreciate the intent of the sponsors of HB 108 to stand up for traditionally oppressed racial, ethnic, and religious groups. At the ACLU of PA, we believe that the answer to offensive speech is more positive speech. This bill is unnecessary to protect victims of hate crimes, but it does raise important free-speech issues. Please vote “no” on HB 108.