

California needs stronger laws

against bigots who resort to violence

By Thomas F. Coleman

The Herald Examiner recently published an editorial (Aug. 30) on "gay bashing" which virtually asked Gov. Deukmejian to veto AB848. Having passed the Assembly and the Senate, that bill is currently on the governor's desk.

The Ralph Civil Rights Act was first enacted in 1976. It punishes bigots who manifest their prejudice in the form of violence — specifically, violence inflicted simply because of the victim's race, religion, color, national origin, ancestry, political affiliation, sex or position in a labor dispute. A mandatory \$10,000 fine is imposed under this law, over and above any other criminal or civil liability which might apply. The victim is authorized to collect the penalty in a civil lawsuit.

AB848 would amend the Ralph Civil Rights Act so that violence committed against persons because of their age, disability or sexual orientation would be similarly punished. By passing AB848, the Legislature has sent a strong and clear message to would-be attackers of elderly, disabled and gay persons that such senseless acts of violence will not be tolerated.

The Herald Examiner could not have been more inaccurate when it called AB848 "redundant legislation." It should have considered the following points before criticizing the California Legislature for passing AB848 and inviting the governor to veto the bill.

The primary purpose of the Ralph Civil Rights Act is to punish violent behavior directed toward an individual simply because of his or her membership in a minority group. The fact that existing statutes already prohibit violence in general terms does not detract from the legislative duty to pass specific laws mandating penalties for "particularly odious" forms of violence.

The punishment specified by the Ralph Civil Rights Act is a mandatory \$10,000 fine. Existing law governing the imposition of punitive damages in a civil lawsuit is vague and discretionary. AB848 ensures the imposition of a mandatory

minimum fine, without any ifs, ands or buts.

The victim is assured the aggressor will be punished for such vicious activity because the victim is authorized to collect the fine in a civil action, even though the police or prosecutor fail to successfully press criminal charges.

In some cases, the criminal law may not be used to punish acts of violence. For example, an assault conviction cannot be predicated upon an intent only to frighten. The Ralph Civil Rights Act fills a gap which exists in criminal law because it punishes an aggressor who threatens a victim with violence simply because of the victim's status. Obviously, in cases involving threats of violence, AB848 is far from being "redundant legislation."

The Ralph Civil Rights Act increases the likelihood of punishment by sidestepping various procedural obstacles inherent in criminal proceedings. Unlike a criminal prosecution in which guilt must be established "beyond a reasonable doubt," punishment for a violation of the Ralph Civil Rights Act only requires proof by a preponderance of evidence, because it is imposed in a civil forum. Also, unlike a criminal case in which a unanimous jury verdict is required, here the judge must impose a mandatory penalty when nine out of 12 jurors find that the defendant committed an act of violence or threatened to commit violence simply because of the victim's minority status.

The prospect of punishment through civil prosecution is increased when a minimum judgment of \$10,000 is guaranteed in factually strong cases. The assurance of such an outcome encourages attorneys to represent victims on a contingent fee basis, rather than demanding payment in advance of an hourly fee of \$100 or more. Without an attorney's services on a contingent fee basis, most victims could not afford to bring a civil suit against the wrongdoer.

The Herald's editorial did not question the frequency of attacks on gays, the aged and the handicapped. Indeed, the Herald called the problem "a particularly odious form of violence." Problems which

are "particularly odious" call for particularly punitive laws in response. Far from being "redundant legislation," AB848 is an expression of public policy addressing this disturbing manifestation of violence in no uncertain terms.

When Gov. Deukmejian voted in favor of the Ralph Civil Rights Act as a state senator in 1976, he recognized the need to mete out stiff penalties to combat odious forms of violence. Should he retreat from this position merely because the Legislature has now seen fit to expand the Ralph Civil Rights Act to punish "gay bashers" as well as those who attack the elderly or disabled simply because they are perceived to be easy prey?

Will passing another law stop "gay bashing"? Probably not. After all, murder continues despite death-penalty laws. But the persistence of such violence should not cause hesitation in the legislative trend expanding our arsenal of legal weapons to combat violent behavior. The Legislature has acted to fulfill its responsibility by passing AB848. The bill has the strong support of California's chief law-enforcement officer, Attorney General John Van de Kamp. The only remaining question is what action the governor will take on the bill.

A veto could pose a clear and present danger to the physical safety and well-being of elderly and disabled persons, as well as lesbians and gay men. A new wave of "gay bashing" and other senseless violence could be triggered by such an insensitive move. A veto would cause public confusion regarding the state's official policy concerning such violence. The governor should approve the measure as a signal that Californians are united in their resolve to curb violence.

The Legislature did not pass this law "for the sake of passing laws." It passed it in response to reports of increased violence against individuals because of their perceived status. The fact that one of the groups protected by AB848 is politically or socially unpopular is even more reason for the governor to sign the bill into law. ■

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