

The Hate-Crime Case in Which No One Was Intimidated

A Utah arrest shows the danger of laws that let government enforcers chill speech that they don't like.
By [Conor Friedersdorf](#)



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Earlier this month, a California college student passing through Utah wanted to show contempt for a sheriff's deputy who stopped her friend, so she defiled a pro-police sign. The cop watched, then arrested her.

Now she has been charged with a hate crime and faces possible jail time under a bipartisan hate-crime law passed in 2019. The law allows prosecutors to seek harsher punishments for criminal offenses targeting people for any of more than a dozen reasons, such as the victim's race, religion, gender identity, or—fatefully—status as a police officer. A law previously portrayed as a historic stand against intolerance is now being used to punish speech that state actors dislike.

Proponents of hate-crime legislation tend to assume that they will stigmatize or deter attacks on marginalized and vulnerable groups. But not all authorities with the power to enforce these laws share that vision. The Utah case is a stark reminder that laws intended to impede discrimination can be risky. They can enable government agents to subvert core civil-liberties protections by punishing or chilling speech that its armed enforcers dislike.

Lauren Gibson, who is 19, did not plan to engage in any such speech when she and her friends, after a camping trip, headed back to California in a caravan of three vehicles. Along the way, one driver was pulled over for speeding by a Garfield County deputy.

Gibson told the *Daily Beast* that the cop's attitude toward her friend was too aggressive. Wanting to "stand up for" her friend, Gibson retrieved a pro-police sign that said BACK THE BLUE, stomped on it as the deputy watched, and threw it in the trash. She claims her group had found the sign on the side of the road and kept it. The deputy alleged that she had stolen the sign from a local display.

"The Back the Blue sign was made here in Panguitch, Utah, and many are found in yards and businesses throughout Garfield County," Sheriff James D. Perkins said in a statement that went on to argue that his deputy was victimized:

Ms. Gibson caused a public disturbance and purposely targeted the officer in a very unpeaceful manner ... he was singled out and attacked ... because he was a law enforcement officer. We are greatly disturbed by the hatred shown to law enforcement officers for no apparent reason. We are hopeful that this county can mend and heal from the division.

Gibson was booked with criminal mischief and disorderly conduct. According to the local ABC affiliate, the [arresting document stated](#) that she was "smirking in an intimidating manner" and that "due to the demeanor displayed by Gibson in attempts to intimidate law enforcement" while destroying the sign, the charges are subject to a sentencing enhancement—that is, if convicted, she will be subject to a harsher punishment. Garfield County's account raises obvious questions: While Gibson might have disrespected the sheriff's deputy unjustly, how feeble must a cop be to feel intimidated by a teenager smirking or stomping on a sign? Does the county really need to "heal" from the incident?

Indeed, it's possible that—unless the sign was stolen—no crime was committed at all. Even if Gibson's conduct was disorderly under the letter of the law, a prudent cop or prosecutor would de-escalate this case rather than spend taxpayer time and money on criminal charges. The case has all the hallmarks of a needless attempt to punish "[contempt of cop](#)."

Two years ago, the Utah hate-crime law won widespread support despite its obvious potential for abuse. "Comprehensive hate crimes legislation is essential to protecting the safety and well-being of all Utahns," the Anti-Defamation League's Jonathan A. Greenblatt argued in [a statement](#) prior to its passage. "Hate crimes demand extra attention because of their impact—they not only hurt individual victims, but they also intimidate and isolate whole communities and weaken the bonds of our society." Around the same time, Utah's then governor, Republican Gary Herbert, [called the law](#) "a message that every person, every individual in our society, is worthy of dignity, respect, and love." State Senator Derek Kitchen, a Democrat who is Utah's only openly gay legislator, declared, "This bill comes at such an important time in our community. Everywhere we look we seem to be seeing more hate, more violence, more directed remarks."

The ACLU was a lonely voice of principled opposition. "Our unvarnished view of the criminal justice system," the ACLU of Utah declared in [a 2019 statement](#), "cautions us against supporting lengthier prison or jail sentences to punish hate crimes." The statement went on to warn that "the process of pursuing hate crime charges might ultimately damage free speech."

This was prescient. Hate-crime enhancements offer the state unusual opportunities for viewpoint discrimination because they transform speech that is constitutionally protected, like saying "Fuck the police" or making equivalent gestures, into an act that can effectively lengthen a jail sentence. What would otherwise be protected speech becomes the ostensible evidence that a perpetrator chose a victim out of hatred.

[Avlana Eisenberg: Hate-crime laws don't work as their supporters intended](#)

The threat to speech gets worse as the number of classes grows—as it is likely to do. To oppose ever more inclusive hate-crime laws is to guarantee being accused of [tolerating bigotry](#) against whichever groups are left out of the statute. What's more, some members of excluded groups will feel less valued

than included groups. “I don’t think you should be destroying ‘Blue Lives Matter’ signs. That’s dumb and that’s hate-filled and don’t do it,” Utah Governor Spencer Cox said recently. “I think, you know, that racist behavior may be a little worse, but I don’t know why we have to put it on a scale and always weigh those things.”

That no one ought to be targeted by criminals on the basis of *any* characteristic makes such moral calculations unnecessary. If assaults against Jewish people or trans women or Asian Americans sow fear in entire categories of people, isn’t the same true if criminals assault people because they are socialists or police officers?

But expanding the breadth and bite of these laws imposes costs too often ignored by well-intended proponents. At *Reason* magazine, C. J. Ciaramella rounded up other cases of law enforcement using hate-crime enhancements “to punish people for criticizing them.” Including police as a protected class invites overzealous enforcement, simply because officers have so much discretion.

The Gibson case does not only show how these laws can go wrong, but also hints at a potential reform that could prevent some excesses. If hate crimes “indeed intimidate and isolate whole communities,” as the ADL argues, then prosecutors seeking to enhance a sentence on the basis of “hate” should have to show that some wider intimidation actually took place.

That would be easy enough if someone started burning crosses on lawns, assaulting men leaving a gay bar, or seeking out homes of police officers and scrawling death threats on their front doors. But prosecutors would have trouble persuading a jury that the sheriff’s deputies of rural Utah were intimidated or isolated by a teenage road-tripper stomping on a sign.

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