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Senate

The Senate met at 1 p.m. and was called to order by the Honorable MARK BEGICH, a Senator from the State of Alaska.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Shepherd of souls, who neither slumbers nor sleeps, we seek the completeness that can only be found in You. Lift us above Earth's strident noises until we hear Your still small voice in our inmost being.

Lord, give the Members of this body the wisdom to permit their deep needs to drive them to You. Give them the wisdom to heal divisions and to liberate the oppressed. May Your presence break down every divisive wall and bring a spirit of unity. Silence disruptive voices that would ignite and inflame disunity. Today we again ask Your choicest blessings upon our military men and women and their families who give so much to keep us free.

We pray in the Name of Him who came to set us free. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK BEGICH led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 20, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK BEGICH, a Senator from the State of Alaska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BEGICH thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

SCHEDULE

Mr. LEVIN. Mr. President, following the remarks of the leader, the Senate will resume consideration of the Department of Defense authorization bill. Under an agreement reached last week, there will be up to 40 minutes for debate prior to votes in relation to amendments relating to hate crimes. Those votes would be in relation to one amendment offered by Senator LEAHY or his designee and three amendments offered by Senator SESSIONS. It is my understanding that we may be able to dispose of the Leahy amendment by a voice vote and that the managers are working on the Sessions amendment regarding Attorney General regulations. Upon the use or yielding back of all debate time, the Senate will proceed to a series of at least two rollcall votes and possibly up to four rollcall votes. The votes could occur in the 4 p.m. range. After the Senate disposes of those amendments, we will resume debate on the gun amendment offered by Senator THUNE. Second-degree amendments are in order to the gun amendment. Also under the agreement reached last week, upon disposition of the Thune amendment, Senator LEVIN will be recognized to offer the Levin-McCain amendment relating to the F–22s.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1390, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1390) to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Thune amendment No. 1618, to amend chapter 44 of title 18, United States Code, to allow citizens who have concealed carry permits from the State in which they reside to carry concealed firearms in another State that grants concealed carry permits, if the individual complies with the laws of the State.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

CAP AND TRADE

Mr. JOHANNS. Mr. President, I rise to discuss an Agricultural Committee hearing that is scheduled later on this week. It is an important topic. The hearing is titled ''The Role of Agriculture and Forestry in Global Warming Legislation.'' I look forward to participating. This is the committee's first effort this year to tackle the ongoing climate change debate. It is very important. Much of the discussion in both Houses of Congress has centered on potential new legislation and regulations relative to climate change. Any

kind of new climate-related law would have sweeping consequences that touch every corner of American life. Thus, I have made it clear that any climate change legislation should require a robust, open, and extensive debate on the Senate floor.

Numerous studies have now been released about cap and trade and affect on American life. Those studies also include agriculture. During last year's debate over cap and trade, the Fertilizer Institute released a study stating that the legislation would result in a $40 to $80 increase in the cost to produce an acre of corn. That means higher input costs for livestock producers as well. That same study indicated the cost of producing soybeans would increase from $10 to $20 an acre. Wheat would jump $16 to $32 an acre.

According to one recent analysis, the Waxman-Markey cap-and-trade bill would also have a significant, if not severe, impact on agriculture. If the bill is enacted, farm income is estimated to decrease as much as $8 billion in the year 2012. By 2024, farmers stand to lose $25 billion. An eye-popping $50 billion would be lost by farmers by 2035. Gasoline and diesel costs are expected to increase by 58 percent. Electric rates would soar maybe as high as 90 percent.

Agriculture is an energy intensive industry. Those kinds of increased costs are certainly going to impact this business. These are not isolated studies. The American Farm Bureau Federation, the largest agricultural organization in the country, has also studied these costs. The Farm Bureau reported that if Waxman-Markey were to become law, input costs for agriculture would rise by $5 billion, compared to a continuation of current law. Other studies have indicated in various ways that the likely impact of cap and trade would include increased electricity and heating costs, construction costs, fertilizer prices, higher gas, and higher diesel prices. Different studies come up with varied numbers, but they all paint the same picture—agriculture loses.

None of this should surprise anyone because the bill is specifically designed to increase the cost of energy.

In fact, according to the Congressional Budget Office:

> Reducing emissions to the level required would be accomplished mainly by stemming demand for carbon-based energy by increasing its price.

We also know farmers in America's heartland get hit worse by these high energy costs, and we know that USDA agrees. Last week, USDA officials indicated in testimony to the Senate Environment and Public Works Committee that as a result of cap-and-trade legislation:

> The agriculture sector will face higher energy and input costs.

At the very least, all of this tells us that this is an enormously complicated issue with significant economic ramifications, perhaps as complex as any we will deal with this Congress, not to mention very costly. Given the gloomy predictions about cap-and-trade proposals, it seems clear to me that we need to take an approach that is extensive, methodical, and well thought out. We need more specific and clear analysis to make sure we know—and, most importantly, the American people know—exactly what passage of this bill will mean.

As I mentioned, USDA knows that cap and trade will increase energy prices. Here is the kicker: At the same time the Department also has indicated:

> USDA believes the opportunities for climate legislation will likely outweigh the costs.

Let me say that again: USDA says energy prices will increase, but they think the opportunities for climate change legislation will outweigh the costs. This kind of claim must be based on hard data or it is reckless to make the claim. Such a sweeping conclusion should not be drawn unless the impact is studied and analyzed. If USDA has conducted analysis of increases in farm input costs and weighed them against the measured opportunities, then I applaud their efforts. But if that is the case, it is mystifying that the Department has not shared the analysis, despite having testified before the Senate twice in the 2 weeks preceding this week.

Having served as the Secretary of Agriculture, I know that the USDA has an outstanding team of economists with expertise to do this kind of analysis. That is why last week I sent a letter to the current Ag Secretary, Tom Vilsack, who will testify at the Ag Committee hearing this week. The letter requested USDA to provide the following: A State-by-State analysis of the cost of cap and trade on ag industries; a crop-specific analysis; an analysis of how the legislation would impact livestock producers; finally, USDA's assessment of how many acres will be taken out of production as a result of the bill and what impact this will have on food availability, the cost of food, fiber, feed, biofuels, and other ag products.

Without detailed analysis, USDA's assertions about costs and benefits will simply ring hollow. Why wouldn't the USDA provide this information? Isn't this why the department exists? Agriculture is going to be directly impacted by the legislation. Yet we have no analysis from the people's department. If the people who feed the world are going to get hammered by this legislation, we should know about it. We should debate it, and we should vote on it on this floor.

I hope the third time is the charm for the USDA, and they bring more than rhetoric to Wednesday's hearing. Cap and trade will not affect States, crops or regions equally. It will have a different impact on a corn farmer in Nebraska than on a chicken farmer in Arkansas. Similarly, it will impact a dairy farmer in New York differently than the orange grower in California. We need a State-by-State and commodity-by-commodity analysis. One-size-fits-all will not work. A national average would not paint a true picture. When one is camping, they can't put one foot in the cooler and one foot in the campfire and, on average, it is about right. The same goes for loose assessments that are riddled with averages.

We have a responsibility to seek a full understanding of this legislation's impact on our Nation's farmers and related ag industries. The information I requested is critical to help the Senate and America's producers develop a clearer picture of cost increases for farmers, ranchers, and consumers.

We need the impact analysis to tell us which parts of the country will be hit the hardest and which industries within agriculture will incur the greatest losses as a result of this legislation.

I have asked for this analysis prior to the hearing. I believe it is necessary, and I hope we will have it before the hearing.

I am puzzled by the passage of nearly a full week since my request and no analysis has been provided. I trust the administration has nothing to hide. I will remain engaged in the debate. I look forward to Wednesday's hearing.

With that, Mr. President, I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I am going to proceed on my leader time.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

SOTOMAYOR NOMINATION

Mr. MCCONNELL. Mr. President, I want to begin by thanking the Judiciary Committee staff, as well as Senators LEAHY and SESSIONS, for conducting a collegial, civil, and dignified hearing on the matter of the Supreme Court nomination. In my view, the hearing was in perfect keeping with the importance of the task before it.

Article II, section 2 of the Constitution says the President ''shall nominate''—''by and with the Advice and Consent of the Senate''—''Judges of the supreme Court.'' It is an obligation that all of us in the Senate take very seriously, even though Senators have not always agreed on the exact meaning of the phrase ''advise and consent.'' In fact, it has been the subject of significant disagreement and struggle over the years.

I remember from my days as a young staffer on the Senate Judiciary Committee in the late 1960s and early 1970s, when the debate flared up over the nominations of Clement Haynsworth and Harrold Carswell after a full century in which appointments to the Supreme Court had more or less been a sleepy Presidential prerogative.

It was during that time that I first grasped the danger of politicizing the process. By focusing on a nominees's

ideology or political views above all else, I feared the Senate would end up distorting its traditional role of providing advice and consent and weaken the Presidential prerogative of making appointments to the Court.

I was so concerned, in fact, about the potential dangers that I wrote a law review article on the topic, which I have repeatedly returned to over the years. Its purpose was to establish a meaningful standard for considering Supreme Court nominees that would bring some consistency to the process.

In the course of developing that standard, I went back and looked at the history of nominations, and I noticed something interesting: Every time a Senator had opposed nominees in the past, the reason for doing so was almost always based on the nominees's ''fitness''—even if it was perfectly clear to everyone else that the Senator's opposition was based on political or ideological differences.

What this polite fiction showed me, quite clearly, was that up until fairly recent history, ideology had never been viewed as an openly acceptable reason to oppose a nominee. And, in my view, this aversion to a political litmus test was a good convention and well worth following if we wanted to avoid gridlock every time the White House switched parties.

So I developed a list of fairly standard criteria that I had hoped would govern the process: A nominee must be competent; have obtained some level of distinction; have a judicial temperament; violated no existing standard of ethical conduct; and have a clean record in his or her life off the bench.

In short, a President should be given great deference on his choice of a nominee, and these criteria certainly allowed that. As a Senator, I have consistently applied these criteria to Supreme Court nominees by Presidents of both parties.

In adhering to this standard, I was confident I had history on my side. Despite a few notable exceptions, during the last century the Senate understood its advice and consent role to be limited to an examination of a nominee's qualifications, not his or her ideology. This attitude is consistent with the Framers' decision, after no little debate, to invest the President, not the Senate, with the power to nominate Justices. They did not want politics to interfere. And that is why it has always been my view that opposing a nominee to the Supreme Court because he or she has a different judicial philosophy than I do was not a valid reason for doing so.

During the Clinton years, I had no illusions about the ideology or political views of Stephen Breyer or Ruth Bader Ginsburg. Justice Ginsburg's views on a number of contentious issues were well known and clearly different than my own, such as her view that Mother's Day should be abolished or that the Boy Scouts and Girl Scouts should be criticized for perpetrating false stereotypes about gender.

Most Americans, and certainly most Kentuckians, do not think those kinds of things. Yet despite that, I and the vast majority of my Republican colleagues voted for Justice Ginsburg. Why? Because the Constitution gave the President the power to nominate. And, in my view, Justice Ginsburg met the traditional standards of competence, distinction, temperament, and ethical conduct.

The vote in favor of Justice Ginsburg was 96 to 3. The vote in favor of Justice Breyer was 87 to 9. I voted for both, just as I had voted for every previous Republican nominee to the high Court since my election to the Senate—consistent with my criteria and based on their qualifications.

In voting for nominees such as Ginsburg and Breyer, it was my hope that broad deference to a President's judicial nominees would once again become the standard. Even if the treatment of Republican nominees, such as Robert Bork and Clarence Thomas, suggested that many Democrats felt differently than I did, it was still possible at that time to imagine a day when the traditional standard would reemerge. As it turned out, that hopefulness was misplaced and short-lived.

Things changed for good during the last administration. It was then that the Democrats turned their backs on the old standard once and for all. Ideology as a test would no longer be the exception but the rule. The new order was firmly established at a Democratic retreat in April 2001 in which a group of liberal law professors laid out the strategy for blocking any high-level conservative judicial nominee. The strategy was reinforced during a series of hearings in which Senator SCHUMER declared that ideology alone—ideology alone—was sufficient reason to block judicial nominees.

These events marked the beginning of a seismic procedural and substantive shift on judicial nominees, and the results were just as I had anticipated as a young staffer. Democrats would now block one highly qualified nominee after another to the appeals court for no other reason than the fact that they were suspected of being too conservative for their tastes.

Miguel Estrada was one of the first victims of the new standard. Because he had been nominated by a Republican, Estrada got no points for his compelling personal story, despite the fact that he had come here as a child from Honduras, went to Harvard Law School, clerked on the U.S. Supreme Court, and served as a prosecutor in New York and at the Justice Department. He was blocked by seven leadership-led filibusters—an unprecedented action for an appeals court nominee.

Opponents of the Estrada nomination were ruthless and eventually succeeded in driving him to withdraw from consideration after more than 2 years of entrenched opposition. He was not alone. Democrats employed the filibuster strategy against an entire block of Republican nominees on the insistence of special interest groups and in complete contravention of Senate tradition—often relying on the flimsiest of pretexts for doing so.

As a result, several widely respected, highly qualified nominees saw what should have been a high honor transformed into a humiliating and painful experience for themselves and for their families; the country was deprived of their service on the circuit court; and the standard I had articulated and applied throughout my career became increasingly irrelevant.

Despite my efforts to preserve deference and keep ideology out of the process, the proponents of an ideological test had won the fight; they changed the rules. Filibustering nominees on the grounds of ideology alone was now perfectly acceptable. It was now Senate precedent.

Some may argue that Republicans were no better since a few of them supported filibusters against two Clinton-era nominees, Richard Paez and Marsha Berzon. It is a flawed comparison. First, neither filibuster attempt got very far. And in both cases, the leadership—the leadership—of the Republican Party, including me, strongly opposed the effort.

Senator Lott, the then-majority leader at the time, voted in favor of allowing an up-or-down vote on both nominees, even though he would ultimately vote against them as nominees to the Ninth Circuit, as did I and the vast majority of our conference. It was our view that a President—and in that instance President Clinton—deserved considerable deference and that therefore his nominees should not be filibustered.

The new standard devolved even further during the Roberts nomination. Judge Roberts was a spectacular nominee, a man whose background and legal abilities, even according to Democrats, made him one of the most qualified Supreme Court nominees in the history of our country. For him, Democrats came up with an even more disturbing test.

Ironically, no one Senator articulated this new test more forcefully than Senator Obama. In a floor speech announcing his opposition to John Roberts, Senator Obama was perfectly straightforward. Roberts was completely qualified, he said. But he still would not get his vote. Here is what Senator Obama said on the Senate floor:

> There is absolutely no doubt in my mind Judge Roberts is qualified to sit on the highest court in the land. Moreover, he seems to have the comportment and the temperament that makes for a good judge. He is humble. He is personally decent.

The reason Senator Obama would vote against Judge Roberts, he said, rested not on any traditional standard, but on a new one, a standard which amounted to a kind of alchemy based on what he described as ''one's deepest values, one's core concerns, one's broader perspectives on how the world

works, and the depth and breadth of one's empathy''—what has come to be known as the ''empathy standard.''

So over the course of the Bush administration the rules completely changed. Not only had it become common practice to block nominees on the grounds of ideology, but now it was acceptable to reject someone based solely on the expectation that their feelings—their feelings—would not lead them to rule in favor of certain groups. Suddenly, judges were not even expected to follow the fundamental principle of blind justice. Deference had eroded even more.

As I have stated repeatedly throughout this debate, empathy is a very good quality in itself. And I have no doubt that Senator Obama—now President Obama—had good intentions, and that his heart was in the right place when he made this argument. But when it comes to judging, empathy is only good if you are lucky enough to be the person or group that the judge in question has empathy for. In those cases, it is the judge, not the law, who determines the outcome. And that is a dangerous road to go down if you believe, as I do, in a nation not of men but of laws—which brings us to Judge Sotomayor.

Over the past several weeks, Judge Sotomayor has impressed all of us with her life story. And the confirmation process is not easy. I admire anyone who goes through it, which is why I was gratified by Judge Sotomayor's statement at the conclusion of the hearing that she was treated fairly by everyone.

But the first question I have to ask myself in deciding how to vote on this nominee is this: How stands the traditional standard for voting on nominees?

Deference is still an important principle. But it was clearly eroded during the filibusters of appeals court nominees early in the Bush administration, and it was eroded even further when Senators voted against John Roberts and tried to filibuster Samuel Alito. Moreover, the introduction of a new standard—the empathy standard—forces us to reevaluate again the degree of deference a President should be granted. Isn't it incumbent upon even those of us who have always believed in deference to be even more cautious about approving nominees in this new environment? I believe it is.

If empathy is the new standard, then the burden is on any nominee who is chosen on that basis to show a firm commitment to equal justice under law. In the past, such a commitment would have been taken for granted. Americans have always had faith that our judges would apply the law fairly—or at least always knew they should. Unfortunately, the new empathy standard requires a measure of reassurance about this. If nominees aren't even expected to apply equal justice, we can't be expected simply to defer to the President, especially if that nominee, as a sitting judge, no less, has repeatedly doubted the ability to adhere to this core principle.

This doesn't mean I would oppose a nominee just because he or she is nominated by a Democrat. It means that, at a minimum, nominees should be expected to uphold the judicial oath that judges in this country have taken since the earliest days of our Nation; namely, that they will ''administer justice without respect to persons, and do equal right to the poor, to the rich, and . . . faithfully and impartially discharge and perform all the duties incumbent upon them under the Constitution and laws of the United States, so help [them] God.''

Looked at in this light, Judge Sotomayor's record of written statements suggests an alarming lack of respect for the notion of equal justice and therefore, in my view, an insufficient willingness to abide by the judicial oath. This is particularly important when considering someone for the Supreme Court since, if she were confirmed, there would be no higher court to deter or prevent her from injecting into the law the various disconcerting principles that recur throughout her public statements. For that reason, I will oppose her nomination.

Judge Sotomayor has made clear over the years that she subscribes to a number of strongly held and controversial beliefs that I think most Americans, and certainly most Kentuckians, would strongly disagree with, but that is not why I oppose her nomination; rather, it is her views on the essential question of the duty of a judge and the fact that there would be no check on those views were she to become a member of the Supreme Court.

In her writings and in her speeches, Judge Sotomayor has repeatedly stated that a judge's personal experiences affect judicial outcomes. She has said her experiences will affect the facts she chooses to see as a judge. Let me say that again. She has said her experiences will affect the facts she chooses to see as a judge. She has argued that in deciding cases, judges should bring their sympathies and prejudices to bear. She has dismissed the ideal of judicial impartiality as an ''aspiration''—an aspiration—that, in her view, cannot be met even in most cases. Taken together, these statements suggest not just a sense that impartiality is not just impossible but it is not even worth the effort.

But there is more. It appears these views have already found expression in Judge Sotomayor's rulings from the bench. The clearest evidence of this is the judgment of the Supreme Court itself. The Supreme Court doesn't take easy cases. It only takes cases where there is no easy precedent, where the law is not crystal clear, cases where somebody's policy preferences can more easily make their way into an opinion. In this vein, it is worth noting that the Supreme Court has found that Judge Sotomayor misapplied the law in 9 of the 10 cases in which her rulings were brought before it. In this term, in fact, she is zero for three. Not only isn't this a record to be proud of, together with her statements about impartiality, it is a record to be scared of if you happen to find yourselves standing in front of Justice Sotomayor.

Her most recent reversal by the Court is a perfect illustration of how her personal views can affect an outcome. I am referring to the Ricci case in which a majority of the Justices of the Supreme Court rejected Judge Sotomayor's decision, and all of them, all nine of them, agreed that her reading of the law was flawed.

This was a case in which a group of firefighters who had studied hard and passed a written test for promotion were denied it because not enough minority firefighters had scored as well as they had. In a one-paragraph opinion that a number of judges on her own court criticized as insubstantial and less than adequate given the seriousness of the circumstances, Judge Sotomayor flatly rejected an appeal by firefighters who had scored highly.

Here was a case where Judge Sotomayor's long history of advocacy for group preferences appeared to overtake an evenhanded application of the law. Judge Sotomayor didn't empathize with the firefighters who had earned a promotion, and they suffered as a result. This is the real-world effect of the empathy standard. If the judge has empathy for you, great, but if she has it for the other guy, it is not so good. That is why you can call this new standard a lot of things, but you certainly can't call it justice.

Judge Sotomayor's record on the Second Circuit is troubling enough, but, as I have noted, at least on the circuit court there is a backstop. Her cases can be reviewed by the Supreme Court. This meant that in the Ricci case, for example, the firefighters whose promotions were unfairly denied could appeal the decision. Fortunately for them, the Supreme Court sided with them over Judge Sotomayor. If, however, Judge Sotomayor would become a Supreme Court Justice, her rulings would be final. She would be unencumbered by the obligation of lower court judges to follow precedent. She could act more freely on the kinds of views that animated her troubling and legally incorrect ruling in the Ricci case. That is not a chance I am willing to take.

From the beginning of the confirmation process, I have said that Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Over the years, Americans have accepted significant ideological differences in the kinds of men and women various Presidents have nominated to the Supreme Court, but one thing Americans will never tolerate in a nominee is a belief that some groups are more deserving of a fair shake than others. Nothing could be more offensive to the American sensibility than that.

Judge Sotomayor is a fine person with an impressive story and a distinguished background. But above all else, a judge must check his or her personal or political agenda at the courtroom door and do justice evenhandedly, as the judicial oath requires. This is the most basic and therefore the most fundamental standard of all upon which judges in our country must be judged. Judge Sotomayor does not meet the test.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I congratulate the Republican leader on his statement. I think it was very thorough. I think it was very thoughtful, and I am sure it took a lot of hours of deliberation and observation not only of Judge Sotomayor's record but also of her testimony before the Judiciary Committee. So I congratulate the Republican leader on a very thoughtful statement and one that I think makes very clear the reason he reached the difficult decision to oppose the nomination of Judge Sotomayor for the U.S. Supreme Court.

I wish to say that we are supposed to be on the Department of Defense authorization bill. Obviously, we are not. We are on the hate crimes bill, which the majority leader decided was important enough to replace the proceedings of the Senate on the Defense authorization bill and the very urgent mission we have and obligation and duties we have as a Congress to authorize the means necessary to defend the security of this Nation and the men and women who are defending it. So we will be wrapped around the axle on amendments and which ones are allowed and time agreements. I am not saying this legislation would have moved forward smoothly; there are always some difficulties. But for many years now, I have been involved in the authorization bill, and this is the first time I ever saw the majority leader of the Senate come forward and propose a comprehensive piece of legislation which had not gone through the committee of authorization, and, of course, this side of the aisle then had to, as is our right, propose an amendment of our own. Of course, there is some reluctance on this side of the aisle to agree to a time agreement, and so we go back and forth. Meanwhile, the men and women of the military are in two wars and they don't quite understand why we don't just move forward and do what our oath of office requires us to do, and that is to support and defend the Constitution of the United States. So I will continue to work with the distinguished chairman, and I am hoping we will be able to work together to get the legislation moving again.

I understand there are four amendments to be considered on the hate crimes bill and that a gun amendment has been introduced and there may be amendments on that, and time agreements. Meanwhile, the issue of the F–22 and whether we continue production of it is set aside while we debate nongermane amendments to the Defense authorization bill.

So I guess what is probably going to happen, from previous experience—and I don't know—probably around Thursday, the majority leader will come to the floor and say that we haven't moved forward and we haven't made progress, blame it on this side of the aisle, and file cloture. Then we will have a vote on cloture. I would imagine that given—I don't know how that vote turns out; it depends on whether Members on both sides of the aisle feel their amendments or their views have been adequately addressed.

But I am convinced that we would have moved forward with the authorization bill, that we probably could have addressed the issue of the F–22—and I do not say this side of the aisle is blameless, but I do understand why, when we knew hate crimes was going to be brought up, that those who feel strongly on this side of the aisle—including the fact that it never went through the Judiciary Committee; it has never been reported out but is added on a defense authorization bill—had their concerns. So it is unfortunate. It is unfortunate, and it is not really a good statement about the way we represent the American people, because if there is any legislation we should be moving forward on—and I will take responsibility on this side of the aisle too—that certainly is the Defense authorization bill.

I believe there is an unbroken record of approval of the Defense authorization bill over a many-year period of time. I hope that, on behalf of the greater good, we can sit down and work out amendments and work through the hate crimes and the amendment by the Senator from South Dakota, and we can move forward and get this issue resolved. I don't think it is the right way to do business, particularly when we are talking about the defense of the Nation.

So I pledge to my colleague from Michigan, the distinguished chairman whom I have had the great honor of working with for many years, to try to work through this. But I still maintain that the fact that the majority leader of the Senate felt it necessary to bring a hate crimes bill up before the Senate on a defense authorization bill, which is clearly not germane, triggered this situation we are in today.

Having said that, it is what it is, and so I will go in the back now and see where we can work out amendments, see if we can work out an agreement to have the hate crimes vote, to have the gun vote, and then hopefully work with the target of tomorrow morning for voting on the F–22 since, as we have discussed in the past on the floor of the Senate, the importance of that vote is far transcendent of any single weapons system. It is really all about whether we are going to have business as usual and spend taxpayers' money on what the President of the United States, the Secretary of Defense, the Chairman of the Joint Chiefs of staff, and our other military leaders think should be spent on the Joint Strike Fighter rather than further production of the F–22. From what I understand, it may be a close vote and a very interesting one. I wish we were spending more time debating that than hate crimes and gun amendments.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, first of all, we are operating under a unanimous consent agreement. We have an agreement to vote on the F–22 amendment after 2 hours of debate. We are attempting to schedule that now. People are getting the cooperation of Members for tomorrow morning. That is our goal.

The pending amendments to the hate crimes provision are going to be disposed of this afternoon pursuant to that same unanimous consent agreement. There may be a difference as to how we got to where we are. There is a difference; it was the inability to get the F–22 amendment to a vote, to get a time agreement, which triggered the determination of the majority leader to offer an amendment that Senator KENNEDY had offered about 2 years ago on a Defense authorization bill. It passed the Senate after a long debate.

It is not the first time hate crimes was taken up by the Senate. It is not the first time the hate crimes amendment was offered on the Defense authorization bill. It was offered 2 years ago, and it passed on a 60-to-39 vote, I believe. It was Senator KENNEDY's amendment. Of course, Senator KENNEDY is not available now to offer his own amendment. The majority leader offered it because of Senator KENNEDY's necessary absence.

So now we are operating under a unanimous consent agreement. The pending amendment is Senator THUNE's. It is not germane, but, again, it is not unusual that nongermane amendments are offered in the Senate. We try to keep them to a minimum—those who manage bills—in order to get through the bill.

We are hoping that once the F–22 amendment and the amendment of Senator THUNE are disposed of, we will then be able to get back to germane and relevant amendments. That is our hope. In order for that to happen, we need Members of the Senate to bring those amendments to the floor and tell us they are ready to proceed.

We are working very hard, as we always do, and our staffs are working very hard, as they always do, to clear amendments. I believe we have about 20 amendments that have been cleared already and, at an appropriate time, I believe Senator MCCAIN and I will be able to offer them as a package.

Senator MCCAIN was extremely helpful in getting us to the point where we

could enter the unanimous consent agreement. A vote is scheduled today on our hate crimes-related amendment. We have a time agreement on the F–22 amendment, and a time for voting on that amendment is being discussed. It is my goal that we vote on that amendment tomorrow morning after we debate it.

Please, colleagues, bring your amendments to the floor. We are here. We are ready to be notified of those amendments on which Members of the Senate believe we will need a rollcall vote. We will try to clear as many amendments as we can. We urge our colleagues to notify us now of the amendments they intend to offer.

Mr. President, I ask unanimous consent that amendment No. 1614 be identified as a Kennedy amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask unanimous consent to speak as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MOON LANDING ANNIVERSARY

Mr. BROWN. Mr. President, I rise to celebrate the historic event that took place on this date 40 years ago. On this day in 1969, Ohio native Neil Armstrong became the first human to step foot on the Moon.

For those of us old enough to remember that day, it was a day when the stuff of dreams became reality. While that magical moment is still a source of inspiration for young people today, the times in which the landing took place are often forgotten. The United States and the Soviet Union were in the middle of the space race, but the Moon landing was about so much more than who could get there first.

It was the height of a major progressive era in our Nation's history, which saw the establishment of Medicare and Medicaid; saw the Civil Rights and Voting Rights Act signed into law; the creation of Head Start; a time which saw the beginning of the environmental movement in our time, all within about a 5-year period, during that progressive era.

It was also a time of turmoil for America. We were a nation at war. We bore witness to the assassinations, only a year before, of Dr. Martin Luther King and Robert Kennedy.

When America needed heroes—and it did that summer in 1969—it found them in the crew of the Apollo 11 spacecraft.

Despite uncertain times our Nation faced, we refused to succumb. We moved forward in the most American way—working to achieve what others said could not be done.

I was 16 years old when Neil Armstrong took that historic first step. Neil Armstrong is from Wapakoneta, OH, in the western part of the State, with just shy of 10,000 people and a little more than 100 miles or about a 2-hour drive from where I grew up.

I remember those days when I was 16. We had a black-and-white television, and my brother convinced my parents, because we were the only ones among our friends who still had a black-and-white TV, that they should go out and get a colored TV so we could watch the Moon landing. I think my brother knew—although I am not sure—that the Moon landing would be broadcast in black and white. But my brother convinced my parents to get that TV, on which we enjoyed watching Cleveland Indians baseball games and other things after that. Nonetheless, I am sure almost everybody of almost any age remembers, after watching that Moon landing, going outside on that late July night and looking up at the Moon and being private with our thoughts, wondering about these two Americans walking on the Moon, wondering about the other American in the space capsule—not at that time able to walk on the Moon. He was staying inside the space capsule.

I remember, too, 7 years before Neil Armstrong landed on the Moon, similar to most Americans, watching John Glenn, from New Concord, OH, become the first American to orbit the Earth.

So an Ohioan was the first one to orbit the Earth and an Ohioan was the first to walk on the Moon.

Today, such as then, NASA continues to capture our Nation's imagination. While Neil Armstrong will forever be remembered as the Christopher Columbus of our time, his step for all humankind was a culmination of the efforts of thousands of Americans who dedicated themselves to landing on the Moon.

It was more than his crew mates, Buzz Aldrin and Michael Collins. It was more than the hundreds of men and women at mission control. From what is now NASA Glenn Research Center in Cleveland to the hundreds of thousands of scientists and researchers around the Nation, the Moon landing was about the American spirit and know-how. The Apollo 11 Moon landing was a national collaborative success.

As we look back on the past 40 years, we have seen a different country in a different time, with many of the same challenges. As our Nation struggles to pull itself out of the current economic downturn, we have debated what role the government should play in space exploration. While we debate the future of NASA, we must also remember the billions of dollars of economic benefit NASA has brought, and is still bringing, our Nation.

The myth that the Federal Government is incapable of doing great things is shattered when one thinks of achievements such as the Moon landing—not to mention Medicare, Social Security, and all we talked about in that progressive era.

From the six Apollo landings, to Skylab, to cooperation with the Soviet Union, to the shuttle program, to the Hubble telescope, to the space shuttle, and beyond, NASA has touched and improved nearly every aspect of our American way of life.

Those who believe government should sit on the sidelines and merely be an observer in our Nation's future need not look back 40 years but can look at everything NASA has done and what it continues to do today.

Today, NASA, in many ways, is more important than ever. As we work toward a carbon-free economy, we forget that NASA was building the first large-scale windmills in the 1970s. Much of the early work on wind turbine technology development was done at Plum Brook in northern Ohio, near Sandusky, part of NASA Glenn.

In a modern version of the space race, the United States is in a sprint to lead the world in clean energy. NASA's alternative fuel research laboratory, and its solar-powered aircraft, Helios and Pathfinder Plus and its space solar program are just three of the many NASA clean energy programs.

We can create a carbon-free world, and NASA can lead the way, just like it has in aeronautics and space flight. We must never forget the men and women of NASA and their work that enabled the United States to put Apollo 11 on the Moon.

I am proud to cosponsor S. 951, which would authorize the President to award Congressional Gold Medals to Neil A. Armstrong, the first human to walk on the Moon; Edwin E. ''Buzz'' Aldrin, Jr., the pilot of the lunar module and second person to walk on the Moon; Michael Collins, the pilot of their Apollo 11 mission's command module; and the first American to orbit the Earth, John Herschel Glenn.

The bill's sponsor is Senator NELSON of Florida, an American hero in his own right, who has a long history of service to our Nation and NASA.

Today is a celebration of NASA, of the Apollo mission, and a celebration of our country. It is also a celebration of humankind's ability to do great things. Today is a celebration of reaching for the stars in every way.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICDER (Mr. WARNER). Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I am very concerned about legislation that has been added to the Defense bill, the

so-called Hate Crimes Act. Certainly, none of us has any sympathy whatsoever for people who commit crimes of any kind, particularly those who would attack somebody because of their race, ethnicity, sexual orientation, or any other reason. I wish to take a few moments to explain why this is important and why this legislation is not good and it ought not to be passed. Some of my remarks may appear to be technical, but they are very important, in my view, as a former Federal prosecutor for almost 15 years.

I don't think it was ever appropriate that we bring this legislation to the floor and stick it on this Defense bill without having a markup in the committee without the ability to discuss it and improve it.

For years legal commentators and jurists have expressed concern at the tendency of Congress, for the political cause of the moment, to persist in adding more and more offenses to the U.S. Criminal Code that were never Federal U.S. crimes before. This is being done at the same time that crime rates over the past decade or so have dropped and State and local police forces have dramatically improved their skills and technology. There are really fine police forces all over the country today. An extraordinary number of police officers have college degrees and many advanced degrees.

I think two questions should be asked initially. First, is this a crime that uniquely affects a Federal interest, and can it be addressed by an effective and enforceable statute? Second, have local police and sheriffs' offices failed to protect and prosecute this vital interest?

Most people do not understand that a majority of crimes—theft, rape, robbery, and assault—are not Federal crimes and are not subject to investigation by the FBI or any other Federal agency. They could not do so if they wanted to because they have no jurisdiction. They can only investigate Federal crimes. It has been this way since the founding of our country, and it fixes responsibility for law enforcement on local authorities where it should be.

Americans have always feared a massive Federal Government police force. It is something that we have not ever favored. This is not paranoia but a wise approach, and I do not think it should be changed.

Instead of administering justice without fear or favor, this legislation that has been placed on this bill creates a new system of justice for individuals because of their sexual orientation or gender identity, providing them with a special protection, while excluding vulnerable individuals, such as the elderly or police officers or soldiers, from such special protections. I don't think we can justify that.

The purpose of the DOD reauthorization bill is to make sure the men and women who protect our freedoms have the necessary resources to continue to do the fabulous job they have been doing. We should not deviate from this path by addressing matters wholly unrelated to the defense of our Nation.

A bill of such breadth and lack of clarity as this should be carefully reviewed with the opportunity for discussion and amendment in committee. Yet this legislation had no markup in any committee. In fact, no version of the bill has been marked up since 2001, and this version is quite different and more expansive than the 2001 bill.

The committee did hold a quickly thrown-together hearing on June 25 in which Attorney General Holder himself appeared. The Attorney General, however, failed to point to one single serious incident in the past 5 years, when I asked him that question, where the types of crimes that are referred to in the bill, to give special Federal protection to select individuals, were not being prosecuted by State and local governments.

Additionally, the Attorney General refused to say attacks on U.S. soldiers predicated on their membership in the military by, for example, a Muslim fundamentalist, could be considered a hate crime.

It is baffling to me, given previous opposition and serious concerns which have been raised about this legislation, that the act, instead of being constrained, is actually expanded in a vague and awkward way. It focuses on the perception of what someone might have been thinking when they committed the crime and includes categories which are undefined and exceedingly broad, such as gender-related characteristics and gender identity. From questions that have been raised, these categories do not have clear meaning. During the course of debate on hate crimes legislation—a debate that started in 2001—amendments have been offered to also protect our military men and women, where it is unquestioned they have been targeted. Those amendments were rejected.

Mr. President, I will briefly outline my opposition to the legislation in the following ways:

The hate crimes amendment is unwarranted, possibly unconstitutional—certainly, I believe it is unconstitutional in certain parts—and it violates the basic principle of equal justice under the law. The hate crimes amendment to this bill has been said to cheapen the civil rights movement.

When Congress passed the original civil rights statute in 1968, it criminalized violent and discriminatory actions directed at individuals because of race, color, religion, or national origin. There was, sadly, quite a substantial body of evidence that crimes were being committed against minorities and they were not being prosecuted. Section 245 that was then passed was never envisioned by Congress to be a hate crimes statute but one, rather, that would ensure access by minorities to specific activities legitimate to their freedom, such as enrolling in public schools, enjoying the benefit of programs administered by the State, or attending court as a juror.

In 1968, care was taken to ensure that the underlying statute was carefully crafted and narrowly tailored to address the problem of access to ensure that criminal activity fell within the confines of the constitutional requirement that there be a Federal nexus with interstate commerce. The statute enumerates six instances in which a crime could be charged. That statute says this:

> Whoever, whether or not acting under the color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with any person because of his race, color, religion or national origin and because he is or has been. . . .

And then it lists specific areas that would encompass a criminal offense.

> (a) enrolling in or attending any public school or public college.

So if anyone who was attempting to attend a public school or college was interfered with or intimidated because of their race, color, religion or national origin, that would be the offense.

> (b) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof.

In other words, you can go to the city hall, you can go to the health department, and you cannot be discriminated against because of your race or background.

Unfortunately, I have to say there were areas of the country—particularly in my area of the South—where that was not so. People were being unfairly treated. In fact, in some other areas of the country also. I believe great care was taken with that act because, as I said, there was strong evidence to suggest that a Federal expansion of criminal law would be appropriate to deal with it.

So the history of civil rights violations caused and fully justified Congress's passage of this statute. There was direct evidence, for example, that African Americans were being denied the right to vote or intimidated at voting precincts without State and local law enforcement protecting them. There was much evidence, sadly, that other rights of African Americans were not being protected.

But that is not the case with this amendment, and I will talk about that in a minute. Gays and lesbians have not been denied basic access to things such as health or schooling or to the ballot box. They openly are able to advocate their positions today, which I think is certainly healthy, and have no difficulty in approaching government officials at whatever level.

When Eric Holder testified a few weeks ago before the Judiciary Committee, I asked him point-blank for direct evidence that hate crimes against individuals over the past 5 years, because of their sexual orientation or

otherwise, were not being prosecuted by local authorities. Instead of answering the question, he referred me to four cases in his written testimony which he had delivered to the committee. Let me make the number clear as strong evidence that these cases are being prosecuted.

The Attorney General could not come up with 4,000 cases or 400 or 40 cases. He only named four cases in 5 years. So we took a look at those four cases he cited in his testimony, and this is what we found.

In one case, Joseph and Georgia Silva assaulted an Indian-American couple on the beach. Although there was evidence that racial and ethnic slurs were used during the altercation, a California El Dorado County judge ruled that prosecutors failed to produce sufficient evidence that the alleged assault was motivated by racial prejudice. The prosecutor had pursued a hate crimes conviction, including charging Silva with a felony assault, punishable by up to 3 years in prison. The evidence, according to the judge, was that racial slurs were used in the heat of anger. There was no evidence the attack was initiated because of ethnicity.

Both Joseph and Georgia Silva were convicted of assault, the basic crime that they committed, and Joseph Silva was sentenced to 6 months in prison and 3 months probation, while Georgia was sentenced to 1 year in prison.

So the question is, was there an important Federal right left unaddressed that needed to be vindicated by charging this couple again for the crime arising from that assault? In other words, that is what this bill does. It says if we are unhappy with the result in State court under a select group of crimes, the Federal Government can try the case again.

You might say, well, there is a double jeopardy clause in the Constitution; you can't be tried twice for the same crime. Good; if you asked that question, you get an A in constitutional law. However, there is an answer. It has long been established that the States are sovereign and the Federal Government is sovereign. So an individual can be tried by two separate sovereigns without implicating the double jeopardy clause of the Constitution. However, we have always understood that ought not to be done lightly. It ought not be done without a real justification because it violates the spirit of the double jeopardy clause of the Constitution.

Attorney General Holder also cited a 2003 case in Holtsville, NY. In that case, three White men, while using racial slurs, assaulted a group of Latino teenagers as they entered a Chili's restaurant. One of the three defendants entered a guilty plea for his involvement in the assault and was sentenced to 15 months in prison. The other two defendants proceeded to trial and were acquitted because the jury apparently concluded there was insufficient evidence to prove beyond a reasonable doubt that the offense that occurred was to deny the victims access to the restaurant. So they had a trial, and one was convicted and two were not.

The Attorney General cited a South Carolina case where a gay man was assaulted after leaving a bar. During the altercation, he fell and he suffered a fatal strike to the head from the concrete. Stephen Miller was convicted of involuntary manslaughter and sentenced to 5 years in prison.

Finally, the Attorney General cited a case from here in the District of Columbia where a transgender prostitute was murdered. Apparently, after Derrick Lewis discovered that the prostitute he had picked up in his automobile was not female, and the prostitute refused to get out of his car, an altercation of some kind occurred—an argument—and he had a gun and shot and killed this transgender individual. He eventually pled guilty, gave a full statement of what happened, and was sentenced to 10 years in prison. The evidence showed they had begun fighting and that is when he pulled the gun and shot him. He said the individual would not get out of the car.

Well, those are not insignificant crimes, but I can just advise my colleagues, if we just pause one moment and think, we know that at this very moment thousands, maybe 10,000 or more trials are ongoing in State and local courts all over America, and they do not always end as people would like them to end. What this bill does basically is it provides an opportunity for the Federal Government to pick and choose certain crimes they want to prosecute again to get the kind of justice they think might be likely. That is a broad power that we give to the Attorney General and a broad statute I don't believe is compelled by the facts that are happening in America today.

When my staff followed up with the Office of the Attorney General to see why they listed just these cases, the response wasn't that State and local law enforcement were not doing their jobs but that the Attorney General believed the cases were under prosecuted. Citing four cases over 5 years as being underprosecuted is not the kind of evidence needed to justify the passage of such an expansive new piece of legislation that injects Federal prosecutors in areas of crime not heretofore occurring.

After the Judiciary hearing, both Senator COBURN and I sent followup questions to the Attorney General to provide him an additional opportunity to demonstrate that the bill was necessary because of under prosecution, as he had testified. Senator COBURN asked this question:

Precisely how many hate crimes is the Justice Department aware of that have gone unprosecuted at the State and local level?

This is the answer we got from the U.S. Attorney General:

The Department believes that our partners at all levels of law enforcement share our commitment to effective hate crimes enforcement. The Department does not have access to precise statistics of hate crimes that have gone unprosecuted at the State and local level, and we are unaware of any source for such comprehensive information of unprosecuted offenses generally. Federal jurisdiction over the violent bias-motivated offenses covered under S. 909 is needed as a backstop for State and local law enforcement, to ensure that justice is done in every case.

So he is suggesting that, in a select group of cases that are on the front burner today, the Attorney General needs this legislation—S. 909, which has now been attached to the Defense bill—as a backstop for State and local law enforcement to ensure that justice is done in every case.

Well, there are many prosecutorial and jury decisions that are made in State courts every day with which one could disagree. The question is whether the Federal Government will be empowered to ensure justice is done in every case.

I just want to share the reality of the world with my friends here, that anyone, I guess, can conclude that a case didn't end justly for them. One distinguished jurist is famously quoted as saying, ''To speak of justice is the equivalent of pounding the table. It just adds an element of emotion to the discussion.'' But whatever we mean by that word, it basically means the Attorney General gets to decide whatever he wants to do. I am not sure this is good legislation. I think legislation ought to be crisp and clear and set forth criteria by which a prosecution occurs or does not occur, leaving not so much broad discretion among the prosecutorial authorities.

I submitted, after Senator COBURN—or at the same time, really—a similar question because I believed he had not been responsive to my question, and I asked this about our colleague, referring to Senator HATCH—of course a former chairman of the Judiciary Committee and who has worked on this issue for a number of years—and my question is this:

Senator HATCH in the past has offered a complete substitute to similar legislation, which would require that a study be conducted to prove that there is an actual problem with hate crimes not being prosecuted. Do not give me a general response that there are some problems out there. I would like you to provide the Committee with an exact and precise number of hate crimes the Justice Department is aware of which have gone unprosecuted at the State and local level. Please detail every example you or anyone in the Department of Justice is aware of where no prosecutorial effort took place.

This was the answer we got:

The Department is unable to provide an exact number of cases in which State, local or tribal jurisdictions have failed to prosecute hate crimes because we are not aware of any such compilation of data.

Senator HATCH has been offering this amendment for a study for a decade.

The Attorney General goes on to say:

When the Department receives complaints it clearly lacks jurisdiction to prosecute, these matters generally are never opened as investigations. . . .

Let me just say, if this legislation is passed it will have one dramatic, undiscussed impact. Federal law enforcement agents—and there are not many. You may have a city with 300 police officers in it and 10 FBI agents, another hundred sheriffs' deputies, another number of State officers. Now huge numbers of crimes will be coming across the desk of the FBI, which has terrorism, white-collar crime, bank fraud which they need to be working on today, violent crimes and drug smuggling. Now they are going to have to review hundreds of complaints about cases they had not heretofore had jurisdiction of and did not have to review. I just raise that point as an aside.

Based on the Attorney General's response, I conclude that the bottom line is there is nowhere near the real evidence needed to justify this legislation. No one in this body has produced the evidence, and the Attorney General of the United States, who is promoting the bill, has not produced any. Attorney General Holder's response, instead of demonstrating the need for hate crimes legislation as written, provides verification that it is not necessary, and it raises a question of whether this is driven by political interests at this time. It is easy to complain that anybody who opposes a hate crimes bill favors hate. That is not a fair charge. I think most of our colleagues fully understand that. But politically that is the suggestion some have made when this legislation has been objected to by people with very valid concerns.

As a matter of fact, one of the studies heavily relied on by the Attorney General in support of this bill is a 2008 report published by the National Coalition of Anti-Violence Programs, which is composed primarily of lesbian, gay, bisexual, and transgender groups. They have every right to do those studies and present them, but it is a coalition clearly with a vested interest in the legislation, and it should be examined carefully. The Attorney General had to rely on these types of reports because crime statistics do not support the notion that the incidence of hate crimes has increased. Even though we are doing a better job of reporting those today, still over the past 10 years the number is down, down slightly, even though population is up in our country.

Furthermore, in a rushed attempt to provide answers to the committee prior to this amendment being filed, the Department seemed to put little thought into their responses to our questions. As a matter of fact, it appears the Attorney General didn't think the issue important enough to answer them himself. He let his staff people answer, when he was the one who appeared before the committee and we were following up on his personal testimony.

A number of arguments and statements have been made, including those by the Attorney General, that there are quite a few of these incidents, tens of thousands of these incidents over the last number of years. But overwhelmingly these despicable incidents are of vandalism, many by juveniles. Let me make clear that even those incidents are significant and deserve prosecution and investigation and, where appropriate, stiff punishment. But let's look at the views of the members of the U.S. Commission on Civil Rights, our own U.S. Civil Rights Commission, who have examined this legislation carefully. Six of its eight members signed a strong letter to the President and to the Judiciary Committee to oppose hate crimes legislation. Did I mean to say the Civil Rights Commission wrote in favor it? No. But to oppose it. Their letter, dated June 16—just last month—addressed to the Members of the Senate and the President, said this:

> We believe that the MSHCPA [Matthew Shepard Hate Crimes Prevention Act] will do little good and a great deal of harm. Its most important effect will be to allow Federal authorities to reprosecute a broad category of defendants who have already been acquitted by State juries, as in the Rodney King and Crown Heights cases more than a decade ago. Due to the exception for prosecution by ''dual sovereigns,'' [that is the two sovereign entities] such double prosecutions technically are not violations of the double jeopardy clause of the U.S. Constitution. But they are very much a violation of the spirit that drove the Framers of the Bill of Rights, who never dreamed that Federal criminal jurisdiction would be expanded to the point where an astonishing portion of crimes are now both State and Federal offenses. We regard the broad federalization of crime as a menace to civil liberties. There is no better place to draw the line on that process than with a bill that purports to protect civil rights.

They go on to say:

> While the title of MSHCPA suggests that it will apply only to ''hate crimes,'' the actual criminal prohibitions contained in it do not require that the defendant be inspired by hatred or ill will in order to convict. It is sufficient if he acts ''because of'' someone's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability.

I am quoting from the Civil Rights Commission letter.

> Rapists are seldom indifferent to the gender of their victims. They are virtually always chosen ''because of'' their gender. A robber might well steal only from women or the disabled because, in general, they are less able to defend themselves. Literally they [these victims] are chosen because of their gender or disability.

The letter goes on to state their belief that every rape in America would now be declared a crime under this bill because it is an action taken against someone because of their gender.

Professor Gail Heriot, a member of the U.S. Commission on Civil Rights, testified at our June 25 hearing. She made clear that all rapes would be covered under the bill and that, indeed, this was intentional. She said:

> This wasn't just sloppy draftsmanship. The language was chosen deliberately. Officials understandably wanted something susceptible to broad construction, in part because it makes prosecutions easier. As a staff member of the Senate Judiciary Committee back in 1998, I had conversations with the Department of Justice representatives. They repeatedly refused to disclaim the view that all rape would be covered, and resisted efforts to correct any ambiguity by redrafting the language. They wanted a bill with broad sweep. The last thing they wanted was to limit the scope of the statute's reach by requiring that the defendant be motivated by ill will toward the victim's group.

I think that is a serious charge made by a member of the Civil Rights Commission about the purpose of the Department of Justice in supporting this act.

I would note, it is an inevitable delight of prosecutors to have more and more power and more and more ability to prosecute criminals. That is what they do. They are wonderful people. I never enjoyed anything more than being a prosecutor, wearing a white hat every day to work and trying to vindicate decent people from criminal acts. But that is just a tendency of the prosecutorial mindset that we ought not to forget.

The truth is, during the recent hate crimes hearing, no one who testified in favor of the bill could point to a single incident where, I think, a valid hate crime was not pursued or prosecuted by State and local law enforcement officers.

In the latest statistics that are available, of the 2006 hate crimes reported in 2007, only nine were classified as murder or nonnegligent manslaughter. That is certainly nine too many. I think every one should be prosecuted. But no complaints have been raised that any of these were not vigorously or fairly prosecuted. Indeed, two-thirds of the offenses involved property defacement, such as graffiti and name-calling. Missing from the analysis is any evidence that the crimes are not being prosecuted at the State and local level. Indeed, 45 of the 50 States and the District of Columbia already have and enforce hate crimes laws. Although the language is broad and some could criticize it, these States have passed these bills, and they are able to enforce them.

Statistics show that these hate crimes, even with better reporting, have decreased slightly over the years. Forty-four States have stiffer penalties for violence related to race, religion, or ethnicity, and 31 States have tougher penalties on violence related to sexual orientation.

The question arises, do we have a basis for this massive and historic change in Federal enforcement of what have been State crimes?

Perhaps Mr. Andrew Sullivan—an openly gay man who has pioneered the effort to have gays in the military and is a well known and an able writer, provides the answer. Mr. SULLIVAN had this to say about the legislation.

> The real reason for hate crime laws is not the defense of human beings from crimes. There are already laws against that—and Matthew Shepard's murderers were successfully prosecuted to the fullest extent of the law in a State that had no hate crime law at the time.

The real reason for the invention of hate crimes was a hard left critique of conventional liberal justice and the emergence of special interest groups which need boutique legislation to raise funds for their large staffs and luxurious buildings. Just imagine how many direct mail pieces have gone out explaining that without more money, more gay human beings will be crucified on fences. It is very, very powerful as a money-making tool, which may explain why the largely symbolic Federal bill still has not passed (if it passes, however, I'll keep a close eye on whether it is ever used.)

This is a gay man expressing his opinion. No doubt he takes these issues very seriously, and symbolism is important in our political world, but we need to be careful that statutes that become a permanent part of our criminal code are supported by evidence and principle.

I do not think our focus here is to deal with symbolic legislation that is broad and can expand Federal criminal jurisdiction beyond its historic role and where the facts do not support the need. In other words, more narrowly tailored legislation consistent with a constitutional right could very well be something this Congress would want to pass. To pass legislation so extremely broad again could give Federal jurisdiction for the first time in history to every rape that occurs in America. It ought to be looked at with great care and ought not to be stuck onto a defense bill and moved forward, in my opinion.

The Constitution endows Congress with limited and enumerated powers. There is no general police power in the Federal Government. So at this point, I wish to raise issues with the constitutionality of the hate crimes provision.

Congress's power is limited to what it can regulate under the Commerce Clause. The proposed legislation is based upon the idea that a discrete crime in a local community may have an impact on interstate commerce. This is the same theory that was rejected in both U.S. vs. Lopez and U.S. vs. Morrison, where the Supreme Court essentially ruled that intrastate violent conduct does not impact commerce normally.

Nat Hentoff, a well-respected noted civil rights and civil libertarian attorney and writer recently wrote about some constitutional concerns he has with the legislation. This is what he said:

In the definitive constitutional analysis of James B. Jacobs and researcher Kimberly Potter, it is documented in ''Hate Crimes: Criminal Law and Identity Politics'' that in ''Grimm v. Churchill the arresting officer was permitted to testify that the defendant had a history of making racial remarks. Similarly, in People v. Lampkin, the prosecution presented as evidence racist statements the defendant had uttered six years before the crime for which he was on trial,'' as specifically relating to the offense.

As for the 14th Amendment's essential requirement that no person be denied ''the equal protection of the laws,'' there is carved above the entrance to the Supreme Court the words ''Equal Justice Under Law.''

This legislation, certain to be passed by the Senate, now it seems will come to the Supreme Court.

And I am quoting Mr. Nat Hentoff, the well-known and respected civil libertarian civil rights attorney. He says this:

When it comes before the Supreme Court, I hope the Justices will look up at the carving as they go into the building. They should also remember that the Fifth Amendment makes clear: ''nor shall any person be subject for the same offence to be twice put in jeopardy.''

But the House hate crime bill allows defendants found innocent of that offense in a state court to be tried again in federal court because of insufficiently diligent prosecutors; or, as Attorney General Holder says, when state prosecutors claim lack of evidence. It must be tried again in federal court. Imagine Holder as the state prosecutor in the long early stages of a Duke University lacrosse rape case.

What also appalls me, as the new federal bill races toward a presidential signature, is that for many years, and now, the American Civil Liberties Union approves ''hate crimes'' prosecutions. I have long depended on the ACLU's staff of constitutional warriors to act persistently against government abuses of our founding documents. And these attorneys and analysts have been especially valuable in opposing the results of executive branch lunges against the separation of powers in the Bush-Cheney years, and still under Obama.

Then he says this:

Is there no non-politically correct ACLU lawyer or other staff worker or anyone in the ACLU affiliates around the country or any dues-paying member outraged enough to demand of the ACLU's ruling circle to at last disavow this corruption of the Constitution?

That is Mr. Hentoff's view of it.

So this hate crimes amendment is a substantial overreach by Congress, I do believe. It is not carefully crafted or narrowly tailored. Unlike the historic civil rights statute, it seeks to federalize the violent, noneconomic conduct that is local in nature and has little or no Federal nexus.

The Supreme Court has held that violent conduct that does not target economic activity is among the types of crimes that have the least connection to Congress's commerce power. However, this is precisely the sort of violent, noneconomic conduct that this amendment would federalize.

If this approach were permissible, it would put Congress on a path to rely on the Commerce Clause and legislate any criminal law it wants. When it comes to criminal law, Congress would no longer be a body of limited and enumerated powers but would have plenary power to criminalize any and all conduct that is already criminalized by the States, a clear violation of our historical policy of not taking over State and local law enforcement.

There are still a lot of complaints over the drug laws aggressively prosecuted when I was a Federal prosecutor, and many think that was an overreach. When drugs come in, the vast majority from outside the country, they move as interstate commerce, and the courts have held that up.

But there is still intellectual criticism and concern about it. But in this case, you do not have the kind of dramatic nexus, and you also lack the evidence to suggest those cases are not being effectively prosecuted. So the sponsors have also tried to ease constitutional concerns by citing the 13th, 14th and 15th amendments.

The 13th amendment provides Congress with the limited authority to abolish ''all badges and incidents of slavery in the United States.'' I hope my colleagues are not seriously attempting to argue that assaulting someone because of their religious views or gender is tantamount to slavery.

The 14th and 15th amendments apply only to State actions, and since we have already established that States are vigorously prosecuting these actions and not ignoring them, I do not think this is a valid approach.

Finally, I would note that the legislation raises questions concerning the constitutional imperative that there be ''equal justice under law.'' Is there a legitimate, justifiable reason to punish one rape differently than another rape simply because someone decides the first rape was committed out of hate or actually because of the gender of the victim? I think the victims would say the same thing, the criminal should be punished to the fullest extent of the law.

This legislation would add a different element to certain crimes, and I know, as a former prosecutor, make it more difficult and more expensive to obtain a conviction, especially when you have to prove an individual's thought process as an underlying element to the offense.

This bill at bottom tries to distinguish between assaults by declaring if someone assaults and kills his girlfriend because she broke up with him it is not a Federal offense, but if he kills her because she claims she wanted to explore her sexual orientation and he became upset and killed her, that would be a Federal offense.

Senator HATCH offered a complete substitute on Thursday night. It was rejected. His proposal would require that a study be conducted so actual evidence can be obtained to see if there is a real serious problem with States not prosecuting these matters.

For some reason, even though Senator HATCH has been trying to get it passed for quite a number of years, the study has never been conducted, and all proposals for such a study have been rejected. I fear it is because perhaps Mr. SULLIVAN got it right. It is not so much about the failure of States to prosecute these crimes but about an underlying idea to pass a symbolic piece of legislation.

There is no good reason to pass such a broad piece of legislation. To pass it would be unwise. No one believes that individuals should be assaulted because of their beliefs, their gender or their sexual orientation. That type of behavior is unacceptable and should be prosecuted.

It has been prosecuted. I am sure State and local law enforcement officers will continue to do so. I believe

that if my colleagues would study the legislation and think about what they are doing, they would see that this is more unwise and the objections they have heard have far more weight than they had thought initially.

It seems like a good idea. Who would want to be against a crime that says it wants to punish hate? But there are serious matters and constitutional issues, as I noted from the Civil Rights Commission, from the civil rights attorneys such as Mr. Nat Hentoff.

I think, in truth, the Attorney General should have been more balanced in his testimony before the Judiciary Committee. He came pushing this legislation without listening or expressing any concern. But I do think he should have pointed out that it represents one of the largest expansions of Federal law enforcement in history. He should be the first to point out and express that concern. He should not allow politics to drive law in America.

I know most of my colleagues think this is the right thing to do. I wish I had been able to participate more in the debate before it was a done deal the other night. I was involved at the same time, of course, with the confirmation process.

Hopefully, we can watch this legislation come with some ideas that curtail its potential for abuse and make it better. But, in reality, I want my colleagues to know it is time for us in Congress to step back and question carefully any proposal to create new or further expand federal criminal jurisdiction that would encroach upon the historic powers of our State and local law enforcement to enforce the law in their jurisdiction.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I ask unanimous consent that the Senator from Virginia be recognized next as in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(Mr. LEVIN assumed the Chair.)

The PRESIDING OFFICER. The Senator from Virginia is recognized.

SOTOMAYOR NOMINATION

Mr. WARNER. Mr. President, I rise to speak in support of the nomination of Judge Sonia Sotomayor to serve on the Supreme Court of the United States.

First, I would like to applaud Chairman LEAHY and Ranking Member SESSIONS for conducting a successful confirmation hearing. The hearings lasted 4 days, 15 witnesses testified, and thousands of people attended the hearing in person.

The topics of discussion ranged from executive privilege to property rights. In the end, the reviews were that the hearing was constructive and fair. At the same time, millions of Americans all across the country tuned in to the confirmation hearings on television to find out who Justice Sotomayor is.

As a U.S. Senator, I had the privilege of meeting with Judge Sotomayor in person and can say that the American people say what I witnessed firsthand, an individual with extensive judicial experience, a clear understanding of the law, and the judicial temperament to be an excellent Supreme Court Justice. Judge Sotomayor's nomination is a historic moment for several reasons. With 17 years as a Federal district and appellate court judge, Judge Sotomayor has more judicial experience than anyone confirmed for the Court in the past 100 years. She is also part of a small group of judges who have been nominated to the Federal judiciary by Presidents of different parties: President George H.W. Bush and President Bill Clinton. With the addition of President Obama, she will become the first person nominated by three Presidents to serve on the Federal judiciary.

Judge Sotomayor is also the first Hispanic American nominated to serve on the Supreme Court in its 220-year history.

Her family immigrated to the United States from Puerto Rico. The family didn't have a lot of money, but her mother valued education and hard work. Judge Sotomayor would go on to Princeton and Yale Law School, where she excelled academically. Judge Sotomayor did not have the benefit of a family name or wealth but she had ambition. She proved that one can improve their life in a single generation. I am confident many young men and women of all backgrounds are inspired by her example. Perhaps they will hit the books a little harder, practice their craft a little more, and not give up on reaching their own individual dreams.

As Governor of Virginia and now U.S. Senator, I have carried out the responsibility of selecting, vetting, and nominating individuals to serve on the bench. It is an enormous responsibility, because the decisions judges make affect people's lives. Much has been said about Judge Sotomayor's judicial philosophy. In testimony before the Senate Judiciary Committee, she made clear to me that she fully understands the role of a judge. In her own words, her judicial philosophy is simple: ''Fidelity to the law'' and a ''rigorous commitment to interpreting the Constitution according to its terms.''

Independent institutions can attest to this. The American Bar Association unanimously found Judge Sotomayor to be highly qualified, its highest rating. A number of other nonpartisan groups have found her constitutional decisions to be solidly in the mainstream. Judge Sotomayor's commitment to public service, extensive judicial experience, and fidelity to the law make her an excellent candidate to serve on the Supreme Court of the United States. I look forward to casting my vote in support of Judge Sotomayor and encourage my colleagues on both sides of the aisle to do the same.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WARNER). Without objection, it is so ordered.

SIX MONTHS IN OFFICE

Mr. KYL. Mr. President, today marks President Obama's sixth month in office. The President began his term with an enormous amount of goodwill, high approval ratings and pledges to work in a bipartisan way. In the earliest days he reached out in a bipartisan way to secure passage of administration priorities and Republicans reciprocated. For example, I joined the President in supporting the release of the second tranche of financial stabilization money. But the administration has become increasingly partisan in the months since then. The effectiveness of the President's policies is increasingly questioned by the American people as spending and deficits have skyrocketed. Unemployment has gotten much worse since he took office, and America's interests abroad have been challenged with little response.

Let me first speak to the issue of domestic policy, spending and debt. On domestic policy, President Obama's first 6 months in office have been characterized by unprecedented spending and debt accumulation. In 6 months, President Obama has put the country on a course to spend more and accrue more debt than any President in history; in fact, to take on more debt than all of the other Presidents in the history of the United States combined. The President has at the same time exercised the power of government in unprecedented ways. The President knows this is greatly concerning to the American people. So on June 16, President Obama told an interviewer:

I actually would like to see a relatively light touch when it comes to government.

But when it comes to the size and scope of the government, nothing President Obama has done in his first 6 months resembles a light touch. Time after time, he has pushed government intervention and takeovers and huge spending increases as the preferred solutions to various problems, whether it is to stimulate the economy, reform health care, or bail out bankrupt car companies.

The President cites the economic downturn as a reason to clear the way for more and more new spending, but we still don't have any evidence that this record-breaking spending has actually helped the economy. Take the $1.2 trillion so-called stimulus bill. In pitching the stimulus to the Nation, the President pledged that ''a new wave of innovation, activity, and construction would be unleashed all across America.'' The administration also said it would help keep unemployment from topping 8 percent and ''save or

create 3.5 million new jobs.'' He insisted Congress rush the bill through despite concerns about the cost and the Government's ability to disburse funds in a timely way.

As we now know, since President Obama signed the legislation, far from stopping unemployment from exceeding 8 percent, unemployment has now reached over 9.5 percent and is headed to at least 10 percent. The economy has lost over 2 million jobs, including 433,000 last month. According to the White House Web site, which tracks stimulus spending, only 7.68 percent of the stimulus money has been funneled into the economy.

In an article for the Washington Post, Michael Gerson explains why the stimulus is having such a negligible effect:

Pouring money into the economy through a thirst sponge of federal programs . . . is slow and inefficient.

Just as Senate Republicans argued when we opposed this plan.

The nonpartisan Congressional Budget Office projects less than a quarter of the funds earmarked for this bill will be spent by the end of this year, with the lion's share being distributed over the next 3 years, by which time, hopefully, the recession will be over. If that is the case, the administration will no longer have a justification for this stimulus spending. But taxpayers will still be on the hook for the hundreds of billions of dollars the government will have to borrow to pay for it.

Thanks to a new report by Senator COBURN, we know more about some of these wasteful projects that have been funded by the so-called stimulus or are awaiting funds, including a $23.5 million turtle tunnel in Florida, a $550,000 skateboard park in Rhode Island, and even $40,000 to give someone a job in North Carolina to lobby for more stimulus funds. That is just a handful of the projects approved so far.

So what has happened to the President's plan to spend wisely? That brings us to the budget. The President's $3.4 trillion 10-year budget also defies the idea of a light touch. In an editorial about the budget, the Wall Street Journal wrote:

With [his] fiscal 2010 budget proposal, President Obama is attempting not merely to expand the role of the federal government, but to put it in such a dominant position that its power can never be rolled back.

So the spending is the means to an end, a bigger government that can never be tamed. To understand the magnitude of the budget the President proposed, consider: Federal spending will skyrocket to 27.7 percent of the gross domestic product in 2009. That is up from 21 percent of GDP in 2008. According to the CBO's monthly budget review, for the first 9 months of the 2009 fiscal year, outlays are 21 percent higher than they were in the first three quarters of 2008, though revenues have fallen by 18 percent. Federal spending will make up a greater share of the economy in 2009 than in any year since 1945, when the country was still fighting World War II. It is also a greater share of the economy than during the Vietnam war or during the recessions of 1974–1975 or 1981–1982.

The debt created by his budget will be greater than the combined debt created by the budgets of each of the previous 43 Presidents, all the way back to President Washington. By the end of this fiscal year, our publicly held debt will amount to roughly 57 percent of the gross domestic product and deficits of $1 trillion every year are predicted for the next decade. This will drive the debt to 82 percent of the gross domestic product by the year 2019. Interest payments on this debt will soon make up the single largest item in the debt. In fact, as for the interest cost, beginning in 2012 and every year thereafter, the government will spend more than $1 billion a day on finance charges to holders of U.S. debt. That means Federal spending on finance charges for the government's debt will be a whopping $5,700 per household in 2019.

Americans are weary of this kind of debt, to say the least, and many don't think it is fair for Washington to overspend and then simply pass the bill on to our children and grandchildren.

These levels of spending and debt would be reckless in the best of economic times, and they are not consistent with President Obama's pledge for a new era of fiscal responsibility.

Let's turn to health care.

The American people—and those of us in Congress—want health care reform. That is not in question. But President Obama is proposing a trillion-dollar health care program that would, according to the Congressional Budget Office, cause millions of Americans to lose their current care by providing an incentive to employers to drop their health care coverage.

How is this consistent with the President's assurances that if Americans like their current insurance, they can keep it? Remember, 85 percent of Americans have insurance and the vast majority of them like their coverage and they do not want to lose it.

President Obama frames this huge new entitlement as a cost-saving, deficit-reducing measure. At a July 1 townhall meeting in Virginia, the President told participants:

If we want to control our deficits, the only way for us to do it is to control healthcare costs.

But does anyone believe that creating a new trillion-dollar, Washington-run health care bureaucracy will reduce costs? When in history has a new government program ever reduced costs? Our two current government-run health care programs—Medicare and Medicaid—are both on financially unsustainable paths. Medicare alone has a $38 trillion unfunded liability over the next 75 years and is in urgent need of reform.

Some of the projected revenue for the President's plan comes from cuts in Medicare. How is it fair to cut seniors' care to pay for a new government-dominated system for nonseniors, especially since Medicare is already in financial trouble? This would ultimately lead to shortages, rationing, and the elimination of private plan choices—something our seniors rightly fear.

It does not make much sense to strip funds from those already participating in government health care and to then use the savings for the creation of a massive new government health care system that few people want. Americans rightly worry the President's proposals will lead to the kind of denial and delay that happens in Canada and Great Britain.

The President has even said:

What I think the government can do is be an honest broker in assessing and evaluating treatments.

That can only mean one thing: denial and delay of care. In that kind of system, Federal boards would dictate what is best for you and me, if our health care is worth the money, and drive a wedge between doctors and patients.

President Obama said recently:

When you hear the naysayers claim that I am trying to bring about government-run healthcare . . . know this, they are not telling the truth.

Well, maybe the President does not like the term ''government-run health care'' because it is not popular with Americans. But a plan administered by the government, with prices and policies and treatments evaluated and dictated by Washington bureaucrats, is government-run health care, plain and simple.

On another issue, cap and trade: One of the President's oft-repeated campaign pledges was he would not raise taxes on middle-income Americans. But the cap-and-trade legislation he and congressional Democrats are backing would do just that.

On June 26, the House of Representatives passed cap-and-trade legislation described by Harvard University economist Martin Feldstein as ''a stealth strategy for a massive long-term tax increase.''

The bill would implement a cap-and-trade program with the goal of reducing carbon dioxide emissions into the atmosphere. Cap-and-trade programs set strict mandatory limits on carbon emissions from various sources, such as electric utilities. Those sources would then either reduce carbon emissions or buy or trade emission allowances to achieve the required overall emissions reductions.

The energy bill would not directly raise taxes on Americans; that is, they will not necessarily see a larger income tax bill at tax time in April. Rather, cap and trade increases the cost of living for everyone by raising energy costs and consumer prices for virtually everything. The effect would be the same as if the IRS sent them a tax bill.

When the nonpartisan Congressional Budget Office analyzed the cost of a reduction of carbon emissions by 15 percent below 2005 levels, it estimated a

family's cost of living would increase by $1,600.

To put that $1,600 carbon tax in perspective—

Martin Feldstein wrote—

a typical family of four with earnings of $50,000 now pays an income tax of about $3,000. The tax imposed by the cap-and-trade system is, therefore, equivalent to raising the family's income tax by about 50 percent

That is $1,600 that families will not be able to spend or save for the future.

In addition to the tax increase, cap and trade would retard economic growth. The Heritage Foundation analyzed the proposal and concluded it would slow long-term growth by almost $10 trillion over the next 26 years. Jobs would be lost. The Heritage Foundation's analysis, in fact, found that my State of Arizona would lose thousands of jobs.

Proponents of the cap-and-trade proposal argue that job losses will be offset by the creation of new green jobs. But it is not at all certain those jobs will materialize, let alone make up for the jobs that are lost. In Spain, where government has invested heavily in green jobs, two jobs are lost for every green job created, according to Spanish economist Gabriel Calzada.

Especially at a time when the economy is shaky and unemployment has reached a 25-year high, I am disappointed the President is promoting this legislation that not only would violate his campaign promise but would cost taxpayers billions of dollars and harm jobs.

Let me now address some issues that are not directly domestic: free trade issues and problems with Iran and North Korea.

First, on free trade: I am very disappointed that the administration has not made free trade a top priority. It has failed in its first 6 months to take any action on bilateral trade pacts with Colombia, Panama, and South Korea—all of which were signed under President Bush. These trade deals would provide a boost to the U.S. economy and would also strengthen U.S. partnerships in two important regions. Not only has the administration failed to move swiftly on these trade agreements, it has also supported a number of damaging protectionist measures, such as a ''Buy American'' provision in the stimulus package.

These policies have angered U.S. trading partners and hurt America's credibility as a promoter of free trade liberalization. They have already triggered retaliation. For example, after the administration canceled a trucking program with Mexico—a program opposed by the Teamsters Union—the Mexican Government responded by slapping tariffs on a range of American imports, including wheat, beans, beef, and rice. A global recession is no time in which to start a trade fight.

With Iran: There are few regions of the world as volatile as the Middle East. Yet the administration's approach to Iran has been regrettable, to say the least.

When prodemocracy demonstrations were being suppressed in Tehran, the President offered barely a word of support for the people putting their lives on the line for their freedom.

Iranian people were met with violence after they took to the streets to peacefully protest the validity of Iran's Presidential election in June to declare their support for free elections and oppose Iran's oppressive police state.

The President likes to say: Words matter. Very true. But his initial statement referring to ''deep concerns about the election'' failed to condemn the Iranian theocracy and lacked moral fortitude. And even as pressure rose on the President to take a stronger stand, he declined to provide the leadership the world expects from America, the standard bearer for freedom and democracy.

As the Weekly Standard recently editorialized:

Since June 12, [President Obama has] done nothing to help those Iranians who have been seeking, in the words of Thomas Jefferson, '' . . . to assume the blessings and security of self-government.''

Explaining his reticence, the President said:

It's not productive, given the history of U.S.-Iranian relations to be seen as meddling—the U.S. president meddling in Iranian elections.

The United States should be lending full-throated voice to the democratic aspirations of the Iranian people, while seeking to impose sanctions on their oppressors. It is not meddling for the world's oldest and greatest democracy to stand with them.

The administration's Iranian policy was flawed from the beginning. It came into office with the idea that it could negotiate a ''grand bargain'' with the mullahs on Iran's nuclear program and would meet with its rogue leader without preconditions. With the mullah's repression of dissent following Iran's flawed elections, that has all gone by the boards. Of course, it was always destined to fail.

Was it ever realistic to believe this is a government with which we can successfully negotiate—a government that sponsors terrorism and murders peaceful student protesters and does not even have the mandate of its own people? What do we think we can give this government more than it wants a nuclear weapon?

What is more, what message do we send to the Iranian people, many of whom have been arrested, tortured, and had family members killed, by negotiating with this regime while it robs its own people of their fundamental rights? I do not believe the United States can deal in good faith with a regime that so violently suppresses its own citizens. I hope the President will come to agree.

With regard to North Korea, the administration's reaction to North Korea's recent activity is also of concern. As Pyongyang prepares for the transition of power from Kim Jong Il to his son Kim Jong Un, the regime's behavior has become increasingly belligerent and unpredictable.

North Korea has pulled out of the six-party negotiations, restarted its nuclear program, test launched several ballistic missiles, and conducted a suspected underground nuclear test. The regime even declared that it has now abandoned the armistice that brought a cease-fire to the Korean war.

What has the Obama administration done in response to this threat to the security of other nations in the region and indeed to the very security of the United States? The answer is disappointing. It has cut missile defense.

The President's budget cut the Missile Defense Agency's budget for fiscal year 2010 by $1.2 billion and decreased the planned number of Ground-Based Interceptor missiles in Alaska from 44 to 30. These proposals amount to almost a 15-percent cut in the Missile Defense Agency's budget and a major reduction in our missile defense portfolio—at the very moment we should be increasing our capability to defend ourselves and our allies from the North Korean threat.

Finally, a word about the prison at Guantanamo Bay. I think this is important in evaluating the first 6 months of this administration because one of the very first acts of the President, after he was inaugurated 6 months ago, was his self-imposed deadline to close the facility at Guantanamo within 1 year.

A majority of Americans strongly oppose the closure of Guantanamo. Congress has refused to support President Obama's arbitrary deadline to close the facility without a plan, for example, showing where he will relocate the terrorists. The administration has convinced Palau and Bermuda to take a few detainees, but this is not much of a solution if the President is determined to close the facility in just another 6 months. Where will the rest of the detainees still housed at Guantanamo Bay go? We still do not know.

Ultimately, the debate over Guantanamo has become a debate over geography. Both the new Attorney General and the new Solicitor General have endorsed the government's right to detain suspected terrorists indefinitely. Whether we can detain them at Guantanamo or at prisons on U.S. soil does not change the fundamental reality that this administration, similar to its predecessor, will be holding certain individuals without trial.

We have been told that Guantanamo must be closed for symbolic reasons. But America should never make national security decisions based on symbolisms—or on false moral arguments.

In conclusion, on the campaign trail and after his election, President Obama repeatedly promised ''change we can believe in'' and the end of partisan politics in Washington. He pledged to bring Republicans and Democrats together.

On election night, he said:

Let us resist the temptation to fall back on . . . partisanship.

But partisan politics looms larger than ever. Congress is urged to rush costly legislation through, despite frequent Republican concerns about the pricetag and the efficacy of the legislation. Indeed, the President's budget and stimulus both passed mainly on party lines.

As Michael Barone recently wrote, the President:

Brings [to Washington] the assumption that there will always be a bounteous private sector that can be plundered on behalf of political favorites. Hence, the takeover of Chrysler and GM to bail out the United Auto Workers union.

Six months later, President Obama continues to take unnecessary jabs at his predecessor. On his promise for change, more government debt, government bailouts, and large transfers of the economy from the private to the public sector are not what Americans are looking for.

Americans want the President and Congress to support the private sector to help the economy get back on track, without tidal waves of spending, debt, and new taxes. They want real health care reform without a government takeover, and they want the President to lead us in this dangerous world, acknowledging the harsh reality that not every rogue regime will respond to smooth talk.

In the next 6 months, and beyond, I hope the President will take a more sensible and, indeed, more bipartisan course so we can all accomplish what the American people seek.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business and that Senator KAUFMAN of Delaware be recognized after I have concluded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Thank you very much.

Mr. President, I thank the minority whip for his statement on the floor. I would like to suggest I see things a little differently and suggest there are a couple items I would like to speak to.

First, on Guantanamo:

President Obama took office and realized we had a serious problem in Guantanamo Bay. It is a safe and secure facility, but it has become a recruiting tool for terrorists around the world. That is not just his conclusion; it is the conclusion of people I respect very much. Among those who called for the closing of Guantanamo include the following: GEN Colin L. Powell, former Chairman of the Joint Chiefs of Staff and Secretary of State under President George W. Bush; Republican Senators JOHN MCCAIN and LINDSEY GRAHAM; former Secretaries of State James Baker, Henry Kissinger, and Condoleezza Rice; Defense Secretary Robert Gates, who served President Bush and President Obama; ADM Mike Mullen, Chairman of the Joint Chiefs of Staff; and GEN David Petraeus.

These are not politicians, these are people who represent both sides of the political aisle—Democrat and Republican—who have concluded that keeping Guantanamo open, unfortunately, is going to continue to give encouragement to the recruitment of terrorists around the world.

President Obama announced that we should start to close Guantanamo, we should start deciding the fate of each of these prisoners, and it is high time we do.

Under President George W. Bush, hundreds of Guantanamo Bay detainees were released. They were arrested, incarcerated, questioned, and released, no charges against them. It was accepted. We made mistakes on the battlefield. People came up collecting bounties for turning in prisoners who turned out not to be dangerous. These people were released. The overwhelming majority of these people didn't cause any trouble beyond that. Some did. That is a fact. I will not ignore it.

Now comes the Republican side of the aisle arguing that it is unsafe for us to transfer Guantanamo prisoners from Guantanamo to Federal prisons in the United States. I have heard the arguments. They say it is unsafe in my community of Springfield, IL, to have a convicted terrorist; that it is a threat to all the people, the 12.5 million people who live in Illinois, and they believe that is the case around the country. But if we look at the facts, that argument doesn't stand up.

Today, in the prisons of the United States, the Federal prisons, we have 355 convicted terrorists currently incarcerated, being held safely and securely. They are no threat to our safety. In my hometown of Springfield, not far away, just in southern Illinois, maybe a little over 100 miles, is Marion Federal Penitentiary. I visited there several weeks ago and talked to the men and women who are the guards and those running the prison, and they said to me: Senator DURBIN, send them here. We have dealt with terrorists. We have terrorists now on our cell block. We have had crime syndicates. We have had people from the Colombian drug cartels. We can handle them.

The mayor of Marion, IL, went out and said to the people: Are you frightened if these detainees come to Marion?

They said: No.

These guards know how to do their job. This is a Federal penitentiary that is safe. So the fear that is being espoused and bred by the other side of the aisle about Guantanamo Bay is not well placed. What the President is doing systematically and carefully is evaluating each of these prisoners.

I know of one who received notice from our government last year, after having been held for 6 years as a prisoner, that we had no case against him. No charges were going to be pursued. He is still a prisoner. We are looking for a place to put him. He is from the Gaza, a bottled up area. There is a question about whether he goes back there. But the fact is, we have no reason to believe we can convict or prosecute this man for anything. He is being held. It will be his seventh year now. He came in at age 19. He may leave at age 26 or 27. His life is dramatically changed because, unfortunately, our early inclination that he was a danger to this country turned out not to be a basis for a crime that could be prosecuted. That is the reality.

The President has addressed this issue. Just a few weeks ago he announced one of these detainees in Guantanamo Bay was finally going to face justice, and despite the protests of some on the other side of the aisle, he moved that prisoner to New York for a trial. It wasn't the first time the city of New York has had the trial of a terrorist. It has happened before. They know how to hold these terrorists in jail during the course of the trial. We don't hear panic in the streets in New York over it. The only panic and fear we hear comes from the other side of the aisle in the Senate.

The President is doing the right thing closing Guantanamo Bay and saying to the world: We will not engage in torture. We will close Guantanamo Bay. This is a new chapter and a new day for America. With this approach, we are closing down a recruiting tool for terrorists and opening the door for allies to come back to the side of the United States to join us in stopping the kind of extremism that led to the tragedy of 9/11.

So I disagree with my colleague from Arizona who has argued that we shouldn't close Guantanamo Bay. I agree with GEN Colin L. Powell and other military leaders that closing it is in the best interests of the security of the United States.

Senator KYL initiated his remarks by noting that we have reached the 6-month anniversary of the inauguration of President Obama. It is hard to imagine. It seems to have just been flying by if you are on the floor of the Senate with all of the activity and all of the business we have considered. But he made special notice of the stimulus bill.

I wish to remind people what the President inherited when he took his oath of office 6 months ago. Our economy was losing on average 700,000 jobs a month when President Obama took his oath of office. The growth rate was at a negative 6.3 percent, the worst since the 1982 recession. Home foreclosures, mortgage foreclosures were at record levels, and residential investment had fallen by more than 40 percent in just 18 months. Banks were in crisis, freezing lending, and nearly $10 trillion in wealth had been lost in the stock market. Virtually all of us who had 401(k)s or savings involved in the stock market know exactly what happened to those savings. We lost a lot of value.

As President Obama took office, this is what he inherited. He came to the

Congress and said: We can't stand idly by. We have to do something. We have to try to energize this economy, create and save American jobs; give businesses and families a fighting chance. He asked for both sides of the aisle to cooperate.

On the House side not a single Republican House Member would join the President in this effort, in this attempt at a bipartisan effort to deal with the economic situation in our country. On this side of the Rotunda, three Republican Senators stepped up and said they would work with the Democrats to try to find a way to help put our economy back on its feet—only three, despite the President's invitation for all of them to join in this conversation to try to find a compromise to work toward a solution to the problems we faced.

At the end of the day, the bill was a $787 billion recovery and reinvestment bill to be spent over 2 years. We are now 4 months into that 2-year period—150 days, roughly, into that 2-year period—and Senators are coming to the Senate floor, as did the minority whip, and saying it has failed.

Well, let's take a look and see what it has done. So far we have actually spent about $56 billion out of the $787 billion, a very small amount. We have obligated—which means we have promised to spend—up to $200 billion, 4 months into it. We are trying to address this carefully so taxpayers' funds are not wasted. But there are still those who voted against it initially who come to the Senate floor, as the previous Senator did, and say it was a failure; we shouldn't have done it.

Several things should be noted. First, they had no alternative. They had no substitute. They had no option for the economy other than to stand idly by, take two Excedrin, try to take a nap, and hope it would be better in the morning. Not good enough.

If we are going to deal with an economy with so many jobs lost, so many businesses failing, standing idly by waiting for the economy to work its way out would have been a disaster.

This stimulus package from President Obama stopped what could have been the collapse of the U.S. economy and the global economy. We still have a long way to go. We are not out of this recession, but it could have been worse. For those who say we shouldn't have done it, let me tell my colleagues: Over 40 percent of the money in the stimulus package went back to tax breaks for working families in America. Ninety-five percent of working families across America will see the benefits of the Making Work Pay tax credit in their paychecks. Those dealing with job loss, unemployed people, got an additional $25 a week. It doesn't sound like much unless you have no other source of income.

I take it from their statements those on the other side of the aisle think the tax breaks for working families should not have been enacted. They oppose the unemployment compensation benefit increases.

We also gave a helping hand to unemployed families to keep health insurance for their kids and their families. That was part of the stimulus package, as well as money for nutrition assistance, food stamps for some of these unemployed families. So when the other side of the aisle says we shouldn't have done this, they are basically saying we shouldn't have helped these unemployed families and a lot of other families across America. I think it was the right thing to do.

We are making investments in the infrastructure of America as well. Basically, we are trying to make an investment that will give us a recovery in jobs. We were losing about 25,000 jobs a day when this initially hit. Now we are trying to build back from that to create and save jobs across America. In my home State of Illinois, it means infrastructure projects, transportation infrastructure projects, and many others. So we are just beginning. We are moving in the right direction. We have stopped the worst from occurring in the economy. We are going to see a turnaround, I hope, sooner rather than later.

The President's words warrant repeating: This is not going to happen overnight, and we have to be open to the idea that it is going to take some time for us to make the kind of recovery we absolutely need.

Secondly, the Senator from Arizona talked about health care reform. Republican after Republican has come to the Senate floor—not all of them but many of them—and criticized the idea of health care reform, but they are ignoring the obvious. We have a serious problem with health care in America. We are spending twice as much per person as any nation on Earth for health care, and the results—the health care results don't show it. Many times countries spend far less, have far better outcomes in terms of curing diseases and life expectancy.

So we should ask the hard questions: Shouldn't our money be better spent? Shouldn't it be more effectively spent? Then we take a look at what we face when it comes to health insurance premiums, and we find out that premiums over the last several years have been going up three times the increase in the average worker's wages in this country.

We are falling further and further behind as the costs of health care go beyond the grasp of individual families and small businesses. So we have to tackle this, and the American people know we do. They understand this system is, unfortunately, out of control. They have called on us to fix what is broken and to preserve those parts of our system that are important.

One of the things we want to make sure we do is to say: If you have a health insurance policy today you want to keep for your family or your business, you can keep it. Nothing we say or do in the law will change that. It is ultimately your decision.

Secondly, we want to preserve the relationship between doctor and patient—the confidential relationship, the trust that has developed between them so that you can take a member of your family or yourself to a doctor and believe it is a confidential conversation and that doctor is giving the best advice possible for you. We want you to have that choice and make that decision.

What we want to stop is the mistreatment of Americans and American families by health insurance companies. You know what I mean: If you happened to have had an illness last year and it becomes a preexisting condition this year and you find out your health insurance won't cover it, or if they are going to cover it but dramatically increase your premiums, in fact, they increase your premiums without notice or any kind of forewarning that it is going to occur, these sorts of things trouble people.

The fact that their doctors have to get into a fight with health insurance clerks as to appropriate medical care and whether a person should be hospitalized; the fact that health insurance companies, private health insurance companies, have turned out to be some of the most profitable companies in America, even during the recession. All of these things are fair warning that if we don't do something about health care in this country, the costs are going to break the bank, not only for individuals, families, and businesses, but for governments at every single level.

Today many Americans live in fear of the astronomical costs that will occur if they or their families experience a health care emergency. Two and a half Illinoisans in my State of 12.5 million, more than one out of every five under the age of 65, is in a family who must spend more than 10 percent of its income on health care costs. Among those, one-fourth of those are spending more than 25 percent of their income on health care costs.

The other side says: Just leave well enough alone. This isn't ''well enough.'' For these families, this is intolerable and unsustainable. It is an astounding burden. It is 30 percent more people than the number facing the 25-percent payment than faced it 8 years ago.

There is also concern on the other side about cap and trade. Well, cap and trade is a bill that has passed the House to address global warming, to try to assign a value to carbon in our economy. Just last week we had the CEOs of three major companies come speak to us: Duke Energy, one of the largest energy companies in America, DuPont, and Siemens.

They favor the establishment of a cost for carbon. They said: Give us a transition period so that we can make our plants cleaner, our processes more energy effective, and we can meet that goal. We have the creativity to do it.

So we can reduce global warming and reduce the pollution and our dependence on foreign oil. In the meantime, we will create new businesses; new products; new technology that will be energy efficient; new jobs, 21st-century jobs that will pay well, and jobs we can keep right here in America. There are those who oppose this and say leave it as it is. Our continued dependence on foreign oil should be a source of concern to every single person.

I am also genuinely concerned that the world I am leaving my grandson might be a compromised world because of some of the bad environmental decisions that have been made by my generation. We have an opportunity to change that, to make this a cleaner planet, to show ourselves as good stewards of the Earth that God gave us, and we can work together in a bipartisan fashion to find a way to encourage the right conduct and discourage bad conduct when it comes to these energy issues. Some don't want to touch it; they just want to criticize it. At the end of the day, we won't be judged as having met our responsibility if we do nothing.

I know Senator KAUFMAN is on the floor and will ask for recognition at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

APOLLO MOON LANDING ANNIVERSARY

Mr. KAUFMAN. Mr. President, I rise today, on the 40th anniversary of the Apollo 11 Moon landing, to highlight the importance of scientific research and development to America's economic recovery.

Forty years ago, astronauts Neil Armstrong and Buzz Aldrin took the first human steps on the Moon. It was, needless to say, a historic moment for the United States and the world.

Eight years prior, President John F. Kennedy declared before a joint session of the Congress that the United States ''should commit itself to achieving the goal, before the decade is out, of landing a man on the moon.'' Armstrong's famous words, ''One small step for man, one giant leap for mankind,'' marked the fulfillment of President Kennedy's goal. That momentous step signaled the coronation of the United States as the world leader in the sciences—a distinction we held through the rest of the 20th century but which is now in jeopardy.

Make no mistake, the dawn of a renewed American powerhouse economy will not come without the same determination that propelled America's journey to the Moon. The key to America's success in a global economy will be the research, innovation, and hard work of our Nation's scientists and engineers.

Americans at the time were inspired by a sense of patriotism and dedication to explore the universe following the Soviets' successful launch of the Sputnik satellite. The race to the Moon launched a substantial Federal investment in scientific and technological research and development. Students across the country were inspired to study engineering, and I, a working engineer at the time, was among those inspired.

This extraordinary investment in research and development helped fuel the Nation's economic growth and left an indelible mark on our society. The discoveries and innovations of this time created new opportunities, industries, companies, products and services, and new ways of delivering old products and services more efficiently.

Unfortunately, since that time our investments in research and development have not kept up. Other nations may soon outpace us in pursuit of the technological and scientific discoveries that will define this generation. If we hope to assert our country's preeminence in these fields, we must again invest significantly and responsibily in research and development.

The vitality of our economy rests with our ability to be the world's leader in innovation. As we face some of our greatest economic challenges, the scientific and engineering community has the greatest potential to find avenues for what we need most: new, sustainable jobs. That is why I am pleased President Obama has set the goal to devote more than 3 percent of our economy to research and development—a feat that will require significant Federal as well as private investment. The American Recovery and Reinvestment Act has already provided over $20 billion of Federal funds to reach this target, and it is our job to see that these resources are spent wisely in order to achieve the maximum economic benefit.

But the national goal is also about research and development investment by private industry, which the government can help foster with pro-innovation policies. We also need to encourage a new generation of engineers through education policies that emphasize science and math.

I am confident that engineers will continue to foster the research and innovation that will lead America on the path to economic recovery and prosperity. They will help us build a clean energy economy, stay competitive in a globalizing world, and drive the real-world applications from our Nation's health and science research to improve our quality of life. Moreover, these discoveries and innovations will create millions of new jobs and invest in our future.

Just before Apollo 11 returned to Earth, Armstrong concluded that:

> The responsibility for this flight lies first with history and with the giants of science who have preceded this effort; next, with the American people, who have, through their will, indicated their desire; next, with 4 administrations and their Congresses, for implementing that will; and then, with the agency and industry teams that built our spacecraft, the Saturn, the Columbia, the Eagle, and the little EMU, the spacesuit and backpack that was our small spacecraft out on the lunar surface.

Just as we all came together in the race to the Moon over 40 years ago, we need a renewed urgency for science and engineering. The American people, the administration, Congress, agencies, and industries must unite to support the research and development that will lead us not only to new frontiers in health, energy, technology, and security, but to new jobs and, ultimately, a sustainable economic recovery.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, four decades ago, in this extraordinary feat we have recently seen repeated over and over with the death of Walter Cronkite—we have seen that time he was broadcasting live when we landed on the Moon. That restrained TV anchor exhibited extraordinary excitement at the landing on the Moon. That is what the entire world felt at the time.

I was a lieutenant in the Army and happened to be behind the Iron Curtain at the particular time we lifted off. I went to the Embassy in Budapest, Hungary, and asked if they had a TV so that we could see the launch. They said no, but to take your shortwave radio and go outside of the city on those hills and put your radio antenna up, and you can get the BBC, which we did. They cut into NASA control, and we three young Americans stood on that hill cheering as Apollo 11 lifted off.

We fulfilled the human dream of boundless flight to another celestial body. Neil Armstrong promised us that it was ''one small step for man, one giant leap for mankind.'' It was to be the first step on our way to Mars and beyond, toward new knowledge of our universe and, perhaps, the discovery of other life.

Yet today we are mired in a debate about the direction of our space program. We had a little victory last week when we had unanimously confirmed the new Administrator and Deputy Administrator of NASA. But now we are in this debate of where the space program should go. The answer should be obvious: Our thirst for knowledge requires that we explore the universe. I often say that this country is built on the character we have and that we are, by nature, explorers and adventurers. When this country was founded, our frontier was westward. Now that frontier is upward or inward. Space flight—as we continue in pushing that frontier upward, what does it do? It grows science and technology. It grows education. It grows the economy.

Earlier today, I was on one of the network talk shows, and the whole idea was, what does it do for education? My goodness, look at the competitive edge America has in the global economy today from our superiority in math, science, technology, and engineering that occurred over four decades ago. Why? Because young people were so inspired by the extraordinary feats we

were accomplishing in our space program that they wanted to go into engineering, math, science, and technology. That produced a generation of these people from whom we are continuing to reap the benefits.

Of course, space flight improves and enriches life here on Earth. How does it do that? Well, if you think about it, four decades ago what we did was—if we were going to the Moon, we had to have highly reliable systems that were small in volume and light in weight. That led to the revolution in microminiaturization. For instance, my watch is a part of the space program. All of the microminiaturization was spawned off of that necessity to get things smaller, more reliable, and light in weight. That is just one example of how it enriches life here on Earth.

If you think back to the visionary President we had who started this whole thing, President Kennedy said the opening of the vistas of space would bring high costs and grave dangers. Indeed, it did. But he said that ''this country was not built by those who rested.''

So today, on this historic anniversary, let us not rest. Our President needs to make space exploration a national priority. Our Nation needs a clear goal, and that is a lunar base, humans on Mars, and then beyond. It is up to us to continue the greatest adventure. It is up to us to reach for the stars.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS NOS. 1614, AS MODIFIED, 1615, AS MODIFIED, AND 1617, AS MODIFIED

Mr. LEVIN. Mr. President, I ask unanimous consent that it be in order for the Senate to consider en bloc the following amendments: amendments Nos. 1614, 1615, and 1617.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I now call up amendments Nos. 1614, 1615, and 1617 and ask that the amendments be modified with changes at the desk and that once modified, the amendments be agreed to, as modified, and the motions to reconsider be laid upon the table en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments, as modified, were agreed to, as follows:

AMENDMENT NO. 1614, AS MODIFIED

(Purpose: To limit prosecutions until the Attorney General establishes standards for the application of the death penalty)

At the appropriate place, insert the following:

SEC. ___. LIMITATION ON PROSECUTIONS.

(a) IN GENERAL.—All prosecutions under section 249 of title 18, United States Code, as added by this Act, shall be undertaken pursuant to guideline, issued by the Attorney General—

(1) to guide the exercise of the discretion of Federal prosecutors and the Attorney General in their decisions whether to seek death sentences under such section when the crime results in a loss of life; and

(2) that identify with particularity the type facts of such cases that will support the classification of individual cases in term of their culpability and death eligibility as low, medium, and high.

(b) REQUIREMENTS FOR DEATH PENALTY.—If the Government seeks a death sentence in crime under section 249 of title 18, United States Code, as added by this Act, that results in a loss of life—

(1) the Attorney General shall certify with particularity in the information or indictment how the facts of the case support the Government's judgment that the case is properly classified among the cases involving a hate crime that resulted in a victim's death;

(2) the Attorney General shall document in a filing to the court—

(A) the facts of the crime (including date of offense and arrest and location of the offense), charges, convictions, and sentences of all state and Federal hate crimes (committed before or after the effective date of this legislation) that resulted in a loss of life and were known to the Assistant United States Attorney or the Attorney General; and

(B) the actual or perceived race, color, national origin, ethnicity, religion, gender, sexual orientation, gender identity, or disability of the defendant and all victims; and

(3)(A) the court, either at the close of the guilt trial or at the close of the penalty trial, shall conduct a proportionality review in which it shall examine whether the prosecutorial death seeking and death sentencing rates in comparable cases in Federal prosecutions are both greater than 50 percent; and

(B) if the United States fails to satisfy the test under subparagraph (A), by a preponderance of the evidence, the court shall dismiss the Government's action seeking a death sentence in the case.

AMENDMENT NO. 1615, AS MODIFIED

(Purpose: To authorize the death penalty)

At the apporpriate place insert the following:

title, or both, and shall be subject to the penalty of death in accordance with chapter 228 (if death results from the offense), if—

''(i) death results from the offense; or

''(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—

''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person—

''(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, and shall be subject to the penalty of death in accordance with chapter 228 (if death results from the offense), if—

AMENDMENT NO. 1617, AS MODIFIED

(Purpose: To require that hate-crimes offenses be identified and prosecuted according to neutral and objective criteria)

At the appropriate place, insert the following:

SEC. _____. GUIDELINES FOR HATE-CRIMES OFFENSES.

Section 249(a) of title 18, United States Code, as added by section _____ of this Act, is amended by adding at the end the following:

''(4) GUIDELINES.—All prosecutions conducted by the United States under this section shall be undertaken pursuant to guidelines issued by the Attorney General, or the designee of the Attorney General, to be included in the United States Attorneys' Manual that shall establish neutral and objective criteria for determining whether a crime was committed because of the actual or perceived status of any person.''.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

● Mr. KENNEDY. Mr. President, Senator SESSIONS has introduced an amendment that would create two new death penalty eligible offenses for crimes under the Matthew Shepard Act. I stand firmly in opposition to any new legislation that would radically expand the use of the death penalty, and I urge my colleagues in the Senate to oppose the Sessions amendment because it adds another new death penalty to the Federal Criminal Code.

Since the reinstatement of the death penalty in the 1970s, the Death Penalty Information Center has reported that 135 people have been released from death row in the United States because of innocence—approximately one exoneration for every nine executions. Some have attempted to argue that the large number of death row exonerations demonstrates that the system is working. Yet in many cases, fatal mistakes were avoided only because of discoveries made by students or journalists, not the courts.

In the last 6 months, there have already been five exonerations in death penalty cases in four different States. Ronald Kitchen was freed from prison in Illinois after the State dismissed all charges against him on July 7. He had spent 13 years on death row and a total of 21 years in prison. Herman Lindsey was freed from Florida's death row on July 9 after the State supreme court unanimously ruled for his acquittal from a 2006 conviction. As the court said:

> [T]he State failed to produce any evidence in this case placing Lindsey at the scene of the crime at the time of the murder. . . . Indeed, we find that the evidence here is equally consistent with a reasonable hypothesis of innocence.

There have also been three other exonerations of death row prisoners, including Nathson Fields in Illinois, Paul House in Tennessee, and Daniel Moore in Alabama.

This high number of exonerations has led many observers, both liberal and conservative, to express concern about

the fairness of the death penalty's administration. As former Supreme Court Justice Sandra Day O'Connor has stated ''if statistics are any indication, the system may well be allowing some innocent defendants to be executed.'' How can we continue to expand a system that likely leads to the execution of innocent defendants?

The U.S. Government should not be in the business of taking the lives of innocent Americans. Supreme Court Justice Arthur Goldberg once said that the deliberate institutionalized taking of human life by the state is the greatest degradation of the human personality imaginable. We must not expand this flawed system by accepting Senator SESSIONS' broad amendment.

In 2007, New Jersey became the first State to repeal the death penalty since the modern era of capital punishment began in the 1970s. New Mexico followed in 2009. The number of States without a death penalty has now increased to 15. States have begun to recognize that flawed administration of the death penalty has dire consequences—no matter how slight or unintentional that flaw may be.

The American public has also recognized the danger created by a society that supports the death penalty. A 2008 Gallup poll found that support for the death penalty is at its lowest level in the last 30 years. American citizens are deciding that they will not tolerate this archaic form of punishment.

Furthermore, there is no denying that there is a pattern of racial bias in death sentencing. A study in California found that those who killed Whites were over three times more likely to be sentenced to death than those who killed Blacks, and over four times more likely than those who killed Latinos. In addition, a study found that in 96 percent of the States where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. Administration of the death penalty is flawed, and that flaw disproportionately affects racial minorities.

The average cost of defending a Federal murder case when the death penalty is sought is $620,000. That is about eight times the cost of a Federal murder case in which the death penalty is not sought. It has been shown time and time again that sentencing an individual to life in prison is far cheaper than the administration of the death penalty. For example, the California death penalty system costs taxpayers $114 million a year beyond the costs of keeping convicts locked up for life. Taxpayers have paid more than $250 million for each of the State's executions. While the monetary costs of seeking the death penalty are high, the possibility of executing an innocent American is the ultimate cost.

Some argue in favor of the death penalty because they believe it deters individuals from committing some of the most severe crimes. According to a survey of the former and current presidents of the Nation's top academic criminology societies, 88 percent of these experts rejected the notion that the death penalty acts as a deterrent to murder. In addition, a Hart Research Poll of police chiefs in the U.S. found that the majority of the chiefs do not believe that the death penalty is an effective law enforcement tool. If the death penalty does not deter violent crime, we shouldn't ask our government to play executioner.

Stephen Bright is a preeminent scholar on the death penalty. In his law review article Will the Death Penalty Remain Alive in the Twenty-First Century?, he states:

> If we here in the United States examine our own system, face its flaws, and think about what kind of society we want to have, we will ultimately conclude that, like slavery and segregation, the death penalty is a relic of another era, that it represents the dark side of the human spirit, and that we are capable of more constructive approaches to the problem of crime in our society.

All violent crime is reprehensible and deserves to be punished. However, as Stephen Bright points out, we are capable of more constructive approaches to dealing with crime than by using the death penalty. The death penalty is a relic of the past. It has been proven to lead to wrongful executions where innocent lives are lost at the hand of their government. Although most developed nations in the world have abandoned the death penalty, the United States, which purports to be a leader in the protection of human rights, continues to increase the number of death-eligible offenses that are on the statute books.

The Kennedy amendment being offered will ensure consistency with existing federal law and Supreme Court precedent by setting forth clear standards for the use of the federal death penalty only in hate crimes cases where a murder occurs. Given concerns regarding the well-documented mistakes and racial disparities associated with death penalty cases, this amendment adds appropriate safeguards in cases where the federal government seeks the ultimate—and irreversible—penalty of death. In a hate crime prosecution involving the death penalty, the amendment will empower the trial court to determine whether the case was properly considered to be among the most aggravated of death-eligible hate crimes.

The Kennedy amendment is modeled after an existing Nebraska State law, and will establish a system of meaningful proportionality review in capital hate crime prosecutions. If the court determines that a case is not among the ''worst of the worst'' of hate crimes resulting in a homicide, it can dismiss the government's request for a death penalty at the conclusion of the guilt trial or at the conclusion of the penalty trial, before the sentencing decision is submitted to the jury. Under the Kennedy amendment, the test applied by the trial court to determine whether a case is among the ''worst of the worst'' is whether death sentences are sought and imposed more than half the time in similar Federal cases. This information will enable the court to assess the extent to which race or other inappropriate factors may have been a systemic factor in prior capital charging and sentencing decisions in hate crimes that have resulted in the victim's death. The Kennedy amendment's requirements are a significant improvement over existing Federal practice in death penalty cases.

Senator SESSIONS' amendment increases the number of death-eligible offenses. It expands the use of the death penalty to two new offenses—those created by the Matthew Shepard Act. It is time to stand up against expansion of the death penalty. With this statement, I submit several letters of opposition to the Sessions amendment and other amendments proposed by Senator SESSIONS. I urge my colleagues to vote against Senator SESSIONS' amendment and to support the Kennedy amendment to correct the flaws in Senator SESSIONS' proposal.

In addition, Senator SESSIONS has introduced an amendment that creates a new Federal criminal offense for cases involving assaults or battery of a U.S. serviceman—or a member of the serviceman's immediate family. It creates a new Federal crime to punish individuals who knowingly destroy or injure the property of an active or retired serviceman or the property of an immediate family member, or conspires to do so. Crimes against veterans, members of the armed service are reprehensible. It is undeniable that our Nation is held together by the protection that these brave men and women provide each day. This amendment places another mandatory minimum in our Federal code. Mandatory minimums are unjust, unwise and unnecessary. Such sentences tie the court's hand to review the facts of an individual case. I hope that problems with the broad language of this amendment and the inclusion of a mandatory minimum can be worked out in conference.

Finally, I appreciate that we were able to work with Senator SESSIONS to make some modifications to his amendment regarding the issuance of Attorney General guidelines for hate crime offenses. For over 40 years, the Justice Department's record demonstrates objective decisionmaking when selecting hate crime cases for prosecution—regardless of the administration in charge.

DOJ guidance and professional responsibility rules already guard against any nonmeritorious prosecution. As originally drafted, Senator SESSIONS' amendment could have prevented ''mistake of fact'' cases—such as an attack against a White person whom the defendant believed to be African American or cases based upon associations—in which a White woman is targeted because her spouse is African American. In addition, there was concern about whether the amendment

could also impede prosecutions where a hate crimes victim was perceived to be African American, Latino, or gay because the amendment covers a more narrow class of victims than those covered under the hate crimes bill. With the cooperation and assistance from Chairman LEAHY's staff along with Senator SESSIONS' staff, I believe that the modified version of this amendment will address these concerns so that the amendment will not be interpreted in any way to limit the scope of victims who are protected under the Matthew Shepard Act.

Mr. President, I ask to have the letters to which I referred printed in the RECORD.

The letters follow.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, July 20, 2009.

Re: ACLU urges ''No'' vote on SA 1615—Sessions Death Penalty Amendment to Hate Crimes Amendment in Defense Authorization Bill (S. 1390); Sessions amendment is unconstitutional.

DEAR SENATOR: On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless activists and supporters, and fifty-three affiliates nationwide, we write to urge you to oppose Senate Amendment 1615, being offered by Senator Jeff Sessions (R–AL) to the National Defense Authorization Act (S. 1390). This unconstitutional and misguided amendment seeks to expand the reach of the federal death penalty, including to non-homicide crimes, by adding it to a hate crimes provision that the Senate adopted by unanimous consent on Thursday night.

Capital punishment has been proven to be an unreliable and expensive means of punishment and Congress should oppose any effort to expand its scope and reach. According to the Death Penalty Information Center, 135 innocent people have been exonerated from death row since 1973, including five so far in 2009 alone. Such a high error rate illustrates the fallibility of our nation's death penalty system. Indeed, chronic problems, including inadequate defense counsel and racial disparities, have always plagued the death penalty system in the United States. In a 2003 report entitled ''Death by Discrimination—The Continuing Role of Race in Capital Cases,'' Amnesty International found that even though blacks and whites are murder victims in nearly equal numbers of crimes, 80 percent of people executed since the death penalty as reinstated have been executed for murders involving white victims. More than 20 percent of black defendants who have been executed were convicted by all-white juries. Even if one supports the death penalty in theory, there is no justifiable reason to expand our system of capital punishment while such discriminatory impacts continue to exist.

A troubling record of the death penalty being imposed on defendants who were later found to be innocent, along with a long history of racial and geographic disparities in its use, have spurred states to move away from its use. In 2007 and 2008, New Jersey and New Mexico, respectively, abolished the death penalty, bringing to 15 the number of states (including the District of Columbia) that currently have no death penalty. In addition, in recent years, the number of death sentences returned by juries has declined precipitously—from around 300 a year in the 1990s to approximately 120 in the past few years.

The ACLU is also concerned that the Sessions Amendment would unconstitutionally expand the reach of the federal death penalty to include certain non-homicide crimes. The United States Supreme Court has already held that the death sentence is an unconstitutional penalty for kidnapping (see Eberheart v. Georgia); sexual abuse (see Coker v. Georgia and Kennedy v. Louisiana); and attempted murder (see Enmund v. Florida and Tison v. Arizona), all crimes included in the scope of the Session amendment. To now expand the reach of the federal death penalty to these non-homicide crimes would be clearly unconstitutional, under recent Supreme Court precedent.

The ACLU has a long history of supporting civil rights legislation, including legislation responding to criminal civil rights violations. While we did not support the underlying hate crimes provision in the defense authorization bill because of First Amendment weaknesses, an expansion of the federal death penalty stands in stark contrast to furthering the cause of civil rights in the United States.

The ACLU urges you to oppose the Sessions Amendment (S.A. 1615) to the defense authorization bill and to vote ''NO'' when it comes to the floor. The ACLU will score this vote. Please do not hesitate to contact Chris Anders at (202) 675–2308 if you have any questions regarding this amendment or the underlying hate crimes provision.

Sincerely,

MICHAEL W. MACLEOD-BALL,
Interim Director, ACLU Washington Legislative Office.
CHRISTOPHER E. ANDERS,
Senior Legislative Counsel.
JENNIFER BELLAMY,
Legislative Counsel.

LEADERSHIP
CONFERENCE ON CIVIL RIGHTS,
Washington, DC, July 20, 2009.

DEAR SENATOR: On behalf of the civil rights, religious, professional, civic, and educational groups below, we write to urge you to oppose two unnecessary and harmful amendments offered by Senator Sessions to S. 1390, the FY 2010 Department of Defense Authorization bill.

As strong supporters of S. 909, the Matthew Shepard Hate Crimes Prevention Act (HCPA), we supported the addition of this legislation as an amendment to S. 1390 last week. At a time when Congress is poised to advance civil rights protection by promoting new Federal-state partnerships and providing new tools to address bias-motivated violence, the proposed amendments by Senator Sessions (a staunch opponent of the HCPA) would be a disturbing step backward—and raise the prospects of unequal, politically-motivated, shifting standards of justice in applying the new hate crime law in the future.

One amendment offered by Senator Sessions, S.Amdt. 1615, would add the death penalty to the provisions of the HCPA. We strongly oppose this amendment.

The HCPA was first introduced in 1997, but no version of the bill has ever included the death penalty. Senate and House sponsors of the bill and the very broad coalition of supporters have always opposed adding the death penalty to this legislation. The House of Representatives approved its very similar version of this measure, HR 1913, the Local Law Enforcement Hate Crime Prevention Act, without the death penalty on April 29 by a vote of 249–175. An amendment to add the death penalty was defeated at the House Judiciary Committee markup.

Supporters of the HCPA should oppose this amendment. The death penalty is irreversible and highly controversial—with significant doubts about its deterrent effect and clear evidence of disproportionate application against poor people. Moreover, there are serious, well-documented concerns about unequal and racially biased application of the death penalty. According to the Justice Department's Bureau of Justice Statistics, since 1977, blacks and whites have been the victims of murders in almost equal numbers, yet 80% of the people executed in that period were convicted of murders involving white victims.

Importantly, the vast majority of hate crimes are prosecuted by state and local officials. Failure to include the death penalty in the HCPA, which will be codified at 18 U.S.C. 249, will not impact state action. States with the death penalty are free to pursue that option.

We also urge you to oppose another amendment, SA 1617, offered by Senator Sessions. This amendment would require the Attorney General to promulgate guidelines with ''neutral and objective criteria for determining whether a crime was motivated by the status of the victim.'' This amendment is unnecessary and injects politics into the Justice Department decision-making process in these cases. Senators should be especially concerned that this additional Attorney General guidance could vary from Administration to Administration, resulting in uncertainty and, at worst, an unequal application of this important law.

Moreover, the amendment is redundant. The HCPA already requires the Attorney General to certify that a crime meets the requirement of the statute before initiating any prosecution:

(A) the State does not have jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

This language tracks the very similar certification requirement from an existing statute, 18 U.S.C. §245. FBI investigators and Justice Department prosecutors have had forty years of experience under this parallel statute to develop well-established procedures governing the conduct of prosecutors—and for determining whether a case is bias-motivated and whether the Justice Department has jurisdiction to pursue it. There is no record of abuse by the Justice Department in selective prosecutions or in using its authority capriciously or arbitrarily. Therefore, there is no need to burden these prosecutions with another layer of guidance and another procedural obstacle.

The time for action to update and expand federal hate crime law is now. These amendments offered by Senator Sessions are unnecessary and harmful and we urge you to oppose them.

Please contact Michael Lieberman, Anti-Defamation League Director, Civil Rights Policy Planning Center or Nancy Zirkin, LCCR Executive Vice President with any questions. Thank you in advance for your support.

Sincerely,

Anti-Defamation League; Human Rights Campaign; Leadership Conference on Civil Rights; National Council of Jewish Women; American Association of People with Disabilities; American Association of University Women (AAUW); American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) American Federation of Teachers.

American Jewish Committee; Amputee Coalition of America; Asian American Justice Center; Association of University Centers on Disability; Bazelon Center for Mental Health Law; B'nai B'rith International; DignityUSA; Disability Rights Education and Defense Fund.

Family Equality Council; GLSEN—The Gay, Lesbian and Straight Education Network; Helen Keller National Center National Coalition on Deaf-Blindness; Hindu American Foundation; Human Rights Campaign; Human Rights First; Jewish Council for Public Affairs; Legal Momentum.

NAACP; NA'AMUT USA; National Advocacy Center of the Sisters of the Good Shepherd; National Center for Transgender Equality; National Coalition for the Homeless; National Coalition on Deaf-Blindness; National Coalition to Abolish the Death Penalty; National Congress of Black Women.

National Council of La Raza; National Disability Rights Network; National Gay and Lesbian Task Force Action Fund; National Urban League; Orthodox Church in America; Parents, Families and Friends of Lesbians and Gays (PFLAG) National; People for the American Way; Religious Institute.

School Social Work Association of America; Sikh American Legal Defense and Education Fund; The American-Arab Anti-Discrimination Committee (ADC); Union for Reform Judaism; Unitarian Universalist Association of Congregations; United Methodist Church, General Board of Church and Society; Women of Reform Judaism; YWCA USA.

AMERICAN BAR ASSOCIATION,
Washington, DC, July 20, 2009.

DEAR SENATOR: I write on behalf of the American Bar Association to urge you to vote against the Sessions Amendment (No. 1615) to create a death penalty offense for what are now non-capital hate crimes. We understand that the amendment will be offered during consideration of S. 1390, Department of Defense authorization legislation.

For decades, the American Bar Association has studied the administration of the death penalty in the United States and identified serious concerns that must be addressed by all jurisdictions that seek to impose it. Among these concerns are: (1) the lack of competent counsel in capital cases; (2) the need for proper procedures for adjudicating claims in capital cases (including the availability of federal habeas corpus); and (3) racial discrimination in the administration of capital punishment. The ABA has called for reforms that are consistent with many longstanding ABA policies intended to ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and to minimize the risk that innocent persons may be executed.

The proposed Sessions Amendment to S. 1390 (''Amendment'') fails to address the profound concerns articulated by the ABA and others about the lack of fairness and due process in the federal death penalty system. To expand an already ''broken system'' without first addressing the serious flaws in the system would risk the execution of innocent persons and other acts of injustice.

The Amendment would also result in an unprecedented and unconstitutional expansion of the federal death penalty. Unlike every other state death penalty statute in the United States, a death sentence pursuant to this Amendment is available for an offense that did not result in the death of a victim. The United States Supreme Court has definitively ruled that a death sentence is inappropriate when the offense did not result in the death of the victim. *Kennedy* v. *Louisiana*, 554 US (2008). The Court held that none of these laws, where the crime against an individual involved no murder, were in keeping with the national consensus restricting the death penalty to the worst offenses. The ABA is thus concerned that the proposed Amendment is not consistent with constitutional principles or Supreme Court precedent.

The ABA strongly condemns hate crimes; we adopted policy in 1987 that states that ''the ABA condemns crimes of violence including those based on bias or prejudice against the victim's race, religion, sexual orientation, or minority status, and urges vigorous efforts by federal, state, and local officials to prosecute the perpetrators and to focus public attention on this growing national problem.'' Likewise, ABA supports the aggressive prosecution and deterrence of these offenses. However, in light of its experiences, studies, and policies on the death penalty, the ABA opposes an expansion of the current federal death penalty system so that these crimes would carry a potential death sentence for offenders.

The American Bar Association thus urges you to vote against this Amendment when it is considered on the Senate floor.

Sincerely,

THOMAS M. SUSMAN,
Director, Governmental Affairs Office.●

AMENDMENT NO. 1616

Mr. LEVIN. Mr. President, I ask unanimous consent that the Sessions amendment No. 1616 now be the pending business, and that at 4:10 p.m., the Senate proceed to vote in relation to the amendment, with the time until then equally divided and controlled in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. SESSIONS, proposes an amendment numbered 1616.

Mr. LEVIN. Mr. President, I ask unanimous consent, with the permission of the Senator from Alabama, that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To prohibit assault or battery of a United States serviceman on account of the military service of the United States serviceman or status as a serviceman)

At the appropriate place, insert the following:

SEC. ___. ATTACKS ON UNITED STATES SERVICEMEN.

(a) IN GENERAL.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following:

''§ 1389. Prohibition on attacks on United States servicemen on account of service

''(a) IN GENERAL.—Whoever knowingly assaults or batters a United States serviceman or an immediate family member of a United States serviceman, or who knowingly destroys or injures the property of such serviceman or immediate family member, on account of the military service of that serviceman or status of that individual as a United States serviceman, or who attempts or conspires to do so, shall—

''(1) in the case of a simple assault, or destruction or injury to property in which the damage or attempted damage to such property is not more than $500, be fined under this title in an amount not less than $500 nor more than $10,000 and imprisoned not more than 2 years;

''(2) in the case of destruction or injury to property in which the damage or attempted damage to such property is more than $500, be fined under this title in an amount not less than $1000 nor more than $100,000 and imprisoned not more than 5 years; and

''(3) in the case of a battery, or an assault resulting in bodily injury, be fined under this title in an amount not less than $2500 and imprisoned not less than 16 months nor more than 10 years.

''(b) EXCEPTION.—This section shall not apply to conduct by a person who is subject to the Uniform Code of Military Justice.

''(c) DEFINITIONS.—In this section—

''(1) the term 'Armed Forces' has the meaning given that term in section 1388;

''(2) the term 'immediate family member' has the meaning given that term in section 115; and

''(3) the term 'United States serviceman'—

''(A) means a member of the Armed Forces; and

''(B) includes a former member of the Armed Forces during the 5-year period beginning on the date of the discharge from the Armed Forces of that member of the Armed Forces.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 67 of title 18, United States Code, is amended by adding at the end the following:

''1389. Prohibition on attacks on United States servicemen on account of service.''.

Mr. LEVIN. I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Alabama.

Mr. SESSIONS. Did we get an agreement on the time before we vote?

The PRESIDING OFFICER. The time is equally divided until 4:10 p.m.

Mr. SESSIONS. Madam President, I thank Senator LEVIN. It is always a pleasure to work with him and others who work with us to make sure that when we prosecute a hate crime that results in death, that it is possible to have the death penalty in Federal court. I think that is appropriate in those instances where it may be appropriate for the Federal Government to proceed with such a death penalty prosecution. It would be odd that it would not be possible and a crime could have resulted—easily in multiple murders—by one of the most vicious criminals one can imagine.

The next amendment I call the soldiers amendment. It is distinct from the hate crimes legislation we have been discussing. It expands the protections that the United States of America provides to its soldiers. Remember, we provide protections now to Federal officers, postmen—any Federal officer of the United States is protected, and so are soldiers in certain circumstances.

This amendment would create a new Federal crime which puts members of the U.S. military on equal footing with other protected classes. It makes it a crime to knowingly assault, batter a serviceman or immediate family member or knowingly destroy or injure

their property ''on account of the military service or status of that individual as a United States serviceman . . . ''

It is not a total expansion of Federal law, but it says if you are attacked or assaulted, battered, or your family members are simply because you are a member of the U.S. military serving your country, then the Federal Government would obviously have the ability to prosecute because it is a high duty, and no higher responsibility, for the U.S. Government to protect its soldiers from assaults arising from their service to our country.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. Madam President, we have had problems with these assaults on our military officers. This will be a good step in correcting that situation.

I thank the Chair for the opportunity to speak. I hope my colleagues will support the amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, first, I thank the Senator from Alabama for this amendment. He is a valued member of the Armed Services Committee. He knows, as we all know, because of our work on the Armed Services Committee, how our men and women in uniform protect us, and we should do everything we can when it comes to our criminal laws to protect them and their families. This amendment is aimed at doing this. It would create a new Federal crime. It is appropriate we do that. I support the amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 1616.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND), the Senator from Florida (Mr. MARTINEZ), and the Senator from Alaska (Ms. MURKOWSKI).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 234 Leg.]

YEAS—92

Akaka	Enzi	Menendez
Alexander	Feingold	Merkley
Barrasso	Feinstein	Murray
Baucus	Franken	Nelson (NE)
Bayh	Gillibrand	Nelson (FL)
Begich	Graham	Pryor
Bennet	Grassley	Reed
Bingaman	Gregg	Reid
Boxer	Hagan	Risch
Brown	Harkin	Roberts
Brownback	Hatch	Rockefeller
Bunning	Hutchison	Sanders
Burr	Inhofe	Schumer
Burris	Inouye	Sessions
Cantwell	Isakson	Shaheen
Cardin	Johanns	Shelby
Carper	Johnson	Snowe
Casey	Kaufman	Specter
Chambliss	Kerry	Stabenow
Coburn	Klobuchar	Tester
Cochran	Kohl	Thune
Collins	Kyl	Udall (CO)
Conrad	Lautenberg	Udall (NM)
Corker	Leahy	Vitter
Cornyn	Levin	Voinovich
Crapo	Lieberman	Warner
DeMint	Lincoln	Webb
Dodd	Lugar	Whitehouse
Dorgan	McCain	Wicker
Durbin	McCaskill	Wyden
Ensign	McConnell	

NOT VOTING—8

Bennett	Kennedy	Mikulski
Bond	Landrieu	Murkowski
Byrd	Martinez	

The amendment (No. 1616) was agreed to.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. I ask unanimous consent I be allowed to speak for 5 minutes and Senator HUTCHISON to follow me.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. I was going to inquire of the Senator whether he is speaking on the bill? It is morning business.

Mr. MCCAIN. For how long?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

HEALTH CARE REFORM

Mr. DEMINT. Madam President, I know we are debating the Defense Authorization bill and a myriad of other things we are sticking into the bill. Nationally, Americans are focused on health care and what the President and the majority are trying to push through in a mad rush that we seem to have been in all year long under this guise of crisis. It is pretty amazing in that the legislation we are talking about would not take effect for several years, so it is incredible we are being told we need to pass this in the next couple of weeks before we go home in August.

The last time the President made grand promises and demanded passage of a bill before it could be reviewed or even read, we ended up with the colossal stimulus failure and unemployment near 10 percent. Now we are being told they misread the economy. But we were urged to pass this within a day or two because we had to do it in order to keep unemployment below 8 percent.

Now the President wants Americans to trust him again but he cannot back up the utopian promises he is making about a government takeover of health care. He insists his health care plan will not add to our Nation's deficit, despite the nonpartisan Congressional Budget Office saying exactly the opposite.

Today we learned that the President is refusing to release a critical report on the state of our economy which contains facts essential to this debate. What is he hiding? If the actual legislation came close to matching the President's rhetoric, he would have no problem passing this bill, with huge Democratic majorities in both Chambers. But Americans are not being fooled and we are discovering the truth about his plan, which includes rationed care, trillions in new costs and high taxes, and penalties which will destroy jobs, and even government-funded abortion.

In addition, we are looking at a deficit increased by hundreds of billions of dollars and billions in new taxes on small businesses. It could destroy over 4 million more jobs, according to a model by the President's own chief economic adviser, and it could force 114 million Americans to lose their health care, according to a nonpartisan group.

Let's be clear. There is no one in this debate advocating that we do nothing, despite the President's constant straw man arguments. Republicans have offered comprehensive health care reform solutions that cover millions of the uninsured without exploding costs, raising taxes, and rationing care. Since I have been in Congress, we have introduced a number of proposals that would help the uninsured buy their own policies.

We have introduced bills that would allow them to deduct it from their taxes just as businesses do, but our Democratic colleagues have killed it. We have introduced legislation that would allow Americans to buy health insurance anywhere in the country, to make it more competitive and more affordable, but the Democrats have killed it. We have introduced legislation that would allow Americans to use money in their health savings accounts to pay for an insurance premium, but the Democrats have killed it. We have introduced legislation that would stop all these frivolous and wasteful lawsuits that cause the cost of medicine to go up, but the Democrats have killed it. We have introduced association health plans that would allow small businesses to come together so they could buy policies less expensively, but the Democrats have killed it. Now they want to come back and say the government needs to take over health care.

It makes absolutely no sense at all. We can give every American access to affordable health insurance plans if we get out of the way and allow the market to work.

This is no time to rush into another government takeover of another part of the American economy, spending billions of dollars we do not have and raising taxes on the small businesses that create jobs.

There are good solutions. I introduced one a couple of weeks ago that

would give people fair treatment. If you do not get your insurance at work or you are unemployed, we will give you $5,000 a year to buy health insurance. That is fair treatment. It is the same basic benefit we give people who get insurance at work, good insurance that does not cost any more money.

I would encourage the President to stop the rhetoric, let us take some time for debate, let's reform health care in a way that makes it possible for every American to have a health insurance plan they can afford and own and keep. We do not need the government to take it over.

I yield for the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

APOLLO 11 ANNIVERSARY

Mrs. HUTCHISON. Madam President, today I rise to speak and commemorate a great milestone; that is, Apollo 11, the anniversary of its landing.

Forty years ago today, on a hot Sunday afternoon in Texas, three astronaut families and close friends in the Houston suburb of El Lago were gathered around television sets in the privacy of their homes watching grainy broadcasts and listening to the sounds from a small loudspeaker wired from Mission Control conveying the voices of astronaut Charlie Duke's conversation with the Apollo 11 astronauts during the final moments leading to the first landing on the Moon.

It was an intensely personal experience for all of them and yet one shared by much of the world. Everyone was glued to their televisions, those who could get to a television at that moment, and waiting for the word, wherever they were. It was 3:18 p.m. Houston time when Neil Armstrong announced: ''Houston, Tranquility Base here, The Eagle has landed.''

A baseball game in Yankee Stadium in New York was stopped, and the announcement made that America had put men on the Moon. The audience erupted in applause and then burst into singing ''The Star Spangled Banner.'' In college dormitories, in workplaces, in living rooms across the world, people gathered to watch this broadcast of the ''giant leap for mankind'' that Neil Armstrong made, and Buzz Aldrin following him onto the surface of the Moon, that attracted and compelled millions of people throughout the world.

The Apollo 11 landing is forever etched in the minds of those who watched it or heard it. They are bound together in the history of mankind in a stunning milestone in the advancement of humanity.

The Apollo Program gave us the very first view through the eyes of human beings, captured and transmitted by their cameras, of the Earth, our own spaceship against the infinite backdrop of space. It gave us great advancement in technology, new industries, capabilities benefitting everyone on Earth, especially medical science and quality of life.

Most importantly, it gave us a new vision of ourselves as a nation and the sense of our ability to accomplish things that once seemed utterly impossible and probably were not even thought about but yet had just happened.

The anniversary we celebrate today comes at a time when we need to be reminded that we can overcome challenges and achieve great things when we are committed and dedicated and prepared to step up to the plate. We face enormous challenges as a nation and as part of the global community: finding solutions to our current economic crisis; ensuring our national security; finding solutions to the many domestic issues we face in health care, unemployment, energy, and the environment.

What many may not recall is that in May of 1961, President Kennedy spoke to Congress on ''urgent national needs.'' He spoke of issues strikingly similar to those we face today. He began with a focus on ''the great battleground for the defense of freedom'' being in Asia, Latin America, Africa, and the Middle East, and of enemies of freedom whose ''aggression is more often concealed than open.''

Remember this is 1961, and the President is talking about issues that relate to us today. Yet, he said, as he turned to the economy, he described the need ''to turn recession into recovery'' and meeting ''the task of abating unemployment and achieving a bold use of our resources.'' He spoke of shoring up our international allegiances and providing aid to developing countries seeking to establish themselves as democratic states. He spoke of reshaping our military to better meet unconventional threats and mobility and flexibility in response and the need to ensure effective and accurate intelligence.

This sounds so familiar because we are talking about a Moon landing, but yet we are facing all of these domestic, international, and security issues at the same time. But yet we do not lose that zeal to command something that is beyond the parameters we have known.

President Kennedy spoke of the need to expand efforts in civil defense, what we might now call homeland security, to ensure the safety of our citizens at home. He spoke of renewed calls for arms control and reductions in nuclear arsenals across the globe.

Finally, he focused his concluding remarks on the challenge of space exploration saying:

> Now is the time . . . for a great new American enterprise—time for this Nation to take a clearly leading role in space achievement which, in many ways, may hold the key to our future on earth.

He went on to use those words that are perhaps the most familiar from that speech.

> I believe this Nation should commit itself to achieving the goal, before this decade is out, of landing a man on the moon and returning him safely to the earth.

President Kennedy made that commitment for U.S. leadership in space and set the highest possible goal for establishment of that leadership with the Apollo Program at a time when the Nation faced challenges not unlike those we face today. I believe he did so because he saw that space exploration was something that could elevate the entire national spirit and enhance its broader economy and national security.

As we celebrate the anniversary of the lunar landing, we honor the vision, the courage, and the accomplishments of all of the men and women of Apollo, whether astronauts, engineers, flight directors, or assembly workers, and their families. We thank them for two generations of excellence and leadership in science and technology.

How do we best honor that legacy? We can do it by continuing our Nation's commitment to space exploration and to sustain the leadership role they won for us in those early pioneering days. We must recognize, as President Kennedy did, that space exploration was an important and urgent national need, not an activity to be short-changed or sacrificed in the face of other pressing economic and security concerns.

We must make the investment needed to ensure that the United States has the ability to launch humans into space. Today, we are looking at a few more missions of our space shuttle, and then we are looking at up to 5 years in which America will not be able to put men and women in space at all.

This is, as Charles Krauthammer said in a recent article: Five years in which we are going to beg Russia or even China for space on their spaceships to be able to put men and women in space.

Forty years ago America did something that changed our country and the world. It gave us new technology. It gave us the dominance of space for our national security purposes. It gave us the ability to have satellite-guided missiles that can now go into a window from miles away and stop the collateral damage and the death of innocent humans when we are in a war situation. It has given us so much. Forty years later we are sitting here with a space program where we are going to have 5 years in which we cannot put men and women into space with our own vehicle. That is not what we should be celebrating on this 40th anniversary. We should be celebrating a renewal of the commitment to space exploration.

We should be celebrating that we are going to finish out an international space station in which many of our international partners have invested billions, as have we, and that we are committed to putting people in that space station that is now designated as a national laboratory—our part is—to have the scientific exploration capability to be able to take the next step in medical research that cannot be done on Earth because we have that national lab.

The idea that we would make that investment and then not be able to put people there for 5 years is unthinkable. That is what it is, it is unthinkable.

So I want to remember the words of President Kennedy, and I have to say I want to remember another speech that President Kennedy made. It was at Rice University. He was talking about why we are committed to putting people on the Moon, why we are committed to things that are so visionary for the future.

He said: Why would we put people into space? Why would Rice play Texas? Not because it is easy but because it is hard.

That very next year, Rice tied the University of Texas in football. It was not in the same league as putting men on the Moon. It was not. But he had the vision and he also had the humor to convey it. He knew what made our country the best country in the world was the vision of doing things that would be seemingly impossible and having the capacity and commitment to do it.

That is what President Kennedy led us to do 40 years ago. Today we must renew that commitment. That is the only way we can show we are worthy of all that has gone on before us that led to Neil Armstrong's famous words: ''One small step for man, one giant leap for mankind.''

I hope with all of the remembrances we are making that the real effort that will be made is what Charlie Bolden said when he was in our committee last week. The chairman of the committee asked Charlie: ''NASA's deteriorating. Tell me why we should support it?''

Charlie Bolden, the new Administrator of NASA, said:

I am committed to doing it and doing it right. We have to have the commitment of Congress to make it happen.

He knows what is right. He is a former astronaut, he is an engineer, he is a great Texan who is a visionary and the person who can implement that vision, and we are going to support him in every way.

I hope all of my colleagues in Congress will do the same thing on the eve of the anniversary of one of the great achievements of America and all mankind.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Madam President, I commend the Secretary from Texas for her commemoration of this spectacular day when Americas went to the Moon. One of them was a fellow named Buzz Aldrin, who lived in the town of Montclair, NJ, the town that I inhabited for many years.

Mrs. HUTCHISON. I thank the Senator from New Jersey because, of course, Buzz Aldrin is going to be at that commemoration tomorrow and has been one of the leaders in trying to make sure America does not flag in its enthusiasm and commitment to space exploration and all that it will bring us.

So I thank the Senator for remembering Buzz Aldrin as well because he was a great astronaut and one of the leaders still today for that very important mission.

Mr. LAUTENBERG. It looked as though it were a fairly simple mission. Now as we study it more thoroughly and realize what conditions were like there—the dust was threatening to the people, to the machinery, to the ship that took them there, to the spaceship that took them there—it was a remarkable event. I join the distinguished Senator from Texas in her tribute.

Mrs. HUTCHISON. I thank the Senator from New Jersey.

AMENDMENT NO. 1618

Mr. LAUTENBERG. Madam President, this past Friday, five policemen from a city in New Jersey, Jersey City, were shot by a single gunman. On the previous Wednesday, only a few hundred feet from the steps of this Senate, a gunman fired an assault weapon at Capitol policemen. Despite this point in time, after all of that mayhem last week, we have seen the prospect for more gun violence offered by the Senator from South Dakota.

He has offered an amendment that would gut State public safety laws and make it easier to carry concealed weapons across State lines, regardless of the laws of that State. Currently 48 States do allow some sort of concealed carried weapons. The standards vary from State to State based on each State's law enforcement needs and challenges. But under this new idea, this amendment would permit a concealed carry permit from one State to simply override the rules in other States. If I get a permit in State A, I can go to State B, C, D, any one I choose, with a weapon on my back, on my hip, wherever I want it. And I don't think it matters how many guns one carries.

Understand this thoroughly, that despite a State's laws on availability of concealed guns, Congress would override them. The State says no. Congress would say: No, we want the Federal Government to be able to tell you what to do. That is unusual, because I think the offeror of this amendment is more often a States rights person. But now he wishes Congress to override State laws and make one's own State follow this mandate. It would deprive one's State from making its own decisions on the issue. One's constituents would not be able to say they don't want this to happen. In fact, this amendment would allow some people to carry concealed assault weapons, multifiring, multishell firing weapons in States where those assault weapons are not even permitted.

The amendment before us is more about the right of States to make their own decisions about how they keep families in their States safe from gun violence. This amendment would allow almost anyone anywhere to carry a concealed firearm regardless of that State's law. Strangers coming into town carrying a hidden weapon have an open sesame opportunity to go anywhere they darn please—into town, into a school, into a sporting event, into a shopping mall, anywhere they wish to go regardless of what that State's laws are. Because under this amendment it is clear: If you have a license for a permit from a State in the Far West and you want to carry it to the eastern part of our country, you can do so. Just take away the public safety laws in that State and essentially erase the fact that they are now in the laws.

The amendment declares to State governments that they don't know how to take care of themselves. The gun lobby in Washington is the best place to go to find out what you should or can do. We can't tolerate such an insult.

Here are some of the State concealed weapon requirements that would be wiped out by the amendment. Eighteen States prohibit alcohol abusers from receiving carry permits, including South Dakota. Under the Thune amendment, these 18 States would have to allow alcohol abusers from other States to carry a weapon into their State. Twenty-four States prohibit those convicted of certain misdemeanor crimes, including Pennsylvania, which does not allow those convicted of impersonating a police officer, to carry concealed weapons. Under this amendment, those prohibitions would be violated. Nineteen States require those seeking concealed carry permits to complete gun safety programs. Under this amendment, those States would have to allow untrained, untested gun users from other States to carry concealed firearms. It is an outrage.

The proponents of this amendment claim they are respecting each State's concealed carry laws. That is simply not true. Not only does the Thune amendment override a State's concealed weapons law, it also overrides State laws restricting the type of guns that can be possessed in that State, such as assault weapons. Think about that; the type of guns that are restricted in the State, that rule would be obviated, and you would have to permit the licensed gun owner from a far different State to come in.

I have a letter from 400 mayors opposed to the Thune amendment. Over 400 mayors wrote to the Congress and said: Vote no on the Thune amendment, including 106 from Pennsylvania, 51 from Florida, 50 from Ohio, 13 from Wisconsin—the list goes on—from Louisiana, from Missouri, from South Carolina, from almost every State in the country that has its own gun laws. They have written and said: Don't do this.

As these mayors explained in their letter:

Each state ought to have the ability to decide whether to accept concealed carry permits issued in other states.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JULY 17, 2009.

Re: 400 mayors call on Congress to respect State autonomy and protect public safety by voting no on the Thune Concealed Carry Amendment.

Hon. NANCY PELOSI,
Office of the Speaker,
Washington, D.C.
Hon. HARRY REID,
Senate Majority Leader,
Washington, D.C.

DEAR SPEAKER PELOSI AND MAJORITY LEADER REID: As members of Mayors Against Illegal Guns, a bi-partisan coalition of more than 400 mayors representing more than 56 million Americans, we are writing to express our strong opposition to Congressional bills pushing for the Thune Concealed Carry Amendment. If passed, this legislation will infringe upon the ability of state and local governments to protect their citizens with sensible, constitutional, community-specific laws and regulations regarding the carrying of hidden handguns. It will empower gun traffickers, making it easier for them to transport the guns they sell to criminals without being apprehended by law enforcement. Finally, the bill threatens the safety of our police officers by making it far more difficult to distinguish between legal and illegal firearm possession.

The Mayors Against Illegal Guns coalition has long believed that the issue of concealed carry regulation is one best left to cities and states. Our coalition believes that what state officials, law enforcement and legislators decide are the best policies for rural areas may not be the best for big cities—and vice-versa.

It is very common for states to set standards for carrying guns on city streets that go beyond simply whether an applicant is able to pass a federal background check. Many states, including those with strong gun rights traditions, have enacted common sense concealed carry laws that prohibit carrying by persons regarded as unusually dangerous and criminals convicted of certain misdemeanors, or that require safety training for anyone who wants to carry concealed firearms. For example:

At least 31 states prohibit alcohol abusers from obtaining a concealed carry permit, including South Carolina, which prevents ''habitual drunkards'' from carrying guns.

At least 35 states prohibit persons convicted of certain misdemeanor crimes from carrying concealed firearms, including Pennsylvania, which bars carrying by those who have been convicted of impersonating a law enforcement officer and other misdemeanor offenses.

At least 31 states require the completion of a gun safety program prior to the issuance of a permit, including Nevada, which requires a 40-question written exam and live fire training from three different positions with a certified instructor as components of their required gun safety course.

This legislation would eviscerate all of these standards, moving concealed carry permitting to a new national lowest common denominator.

Each state ought to have the ability to decide whether to accept concealed carry permits issued in other states. 9 states have chosen to allow concealed carrying by all out-of-state permit holders. However, 12 states choose not to recognize any out-of-state permits. And 29 states recognize permits only from selected states—typically from states with equivalent or higher standards. Any of these options should be available—and it should be each state's choice to make.

This legislation will also aid and abet gun traffickers. In December 2008, Mayors Against Illegal Guns issued a first-of-its-kind report illustrating how traffickers already rely on states with weak laws as a source for the guns they sell illegally. In fact, the report showed that 30% of crime guns crossed state lines before they were recovered, meaning traffickers and straw purchasers often purchase guns in one state and then drive them to their destinations, often major cities hundreds of miles away. This bill would frustrate law enforcement by allowing criminal traffickers to travel to their rendezvous with loaded handguns in the glove compartment. Even more troubling is that a trafficker holding an out-of-state permit would be able to walk the streets of their city with a backpack full of loaded guns, enjoying impunity from police unless he or she was caught in the act of selling a firearm to another criminal.

Finally, this law would not only frustrate our police officers, it would endanger them. Policing our streets and confronting the risks inherent in even routine traffic stops is already perilous enough without increasing the number of guns that officers encounter. Ambiguity as to the legality of firearm possession could lead to confusion among police officers that could result in catastrophic incidences. Congress should be working to make the job of a police officer more safe—not less.

We urge every member of Congress who respects the prerogatives of local law enforcement, wishes to shield communities from gun trafficking, and strives to protect our nation's police officers to take immediate action to oppose and vote against this legislation.

Sincerely,

THOMAS M. MENINO,
Mayor of Boston, Coalition Co-Chair.
MICHAEL R. BLOOMBERG,
Mayor of New York City, Coalition Co-Chair.

Mr. LAUTENBERG. As the mayors make clear, the Thune amendment savages the rights of States to enact their own laws. Unfortunately, this dangerous amendment doesn't end there. It would unleash total havoc by suddenly letting dangerous and unstable people carry weapons into other States and across State lines. Supporters of this amendment claim that only ''law-abiding citizens'' get their hands on concealed weapons permits. That is not true. Over the 2-year period from May 2007 to April 2009, concealed carry permit holders killed seven law enforcement officers with guns. In fact, the Florida Sun Sentinel did an investigation of concealed carry permit holders in Florida and found that Florida granted concealed carry weapons to more than 1,400 people who pled guilty or no contest to a felony; 216 people with outstanding warrants were allowed to carry a gun; 120 people with active domestic violence injunctions; and 6 registered sex offenders.

I worked very hard some years ago—going back to 1996—to get a rule on issuing guns that would say to those convicted of misdemeanor spousal abuse should be unable to get guns. It was scoffed at by some who were here at that time who said: This isn't a gun matter. It is nothing too serious and why bother. I am pleased to tell the Senate that with Supreme Court affirmation about 6 months ago, saying that the law prohibiting gun permits to spousal abusers stood, 150,000 of these people were denied guns.

When I look at these things, it raises a question. While a State such as Florida works to correct these problems, should every other State be forced to allow felons, domestic abusers, and sex offenders to carry guns within their States? I don't want it in my State.

This is a reckless amendment that would force States from coast to coast to comply with the weakest conceal carry laws. A few months ago in Alabama, a person holding a concealed carry license went on a murderous rampage that lasted almost a full hour and spanned two communities. First he shot and killed his mother in Coffee County, AL. He then put on a vest loaded with firearms and ammunition, got into his car and drove into town. Once there he shot and murdered 10 innocent people—we can't forget that—including two young mothers, a father, and an 18-month-old child. It was later discovered that this killer had qualified and been issued a concealed weapons permit from the Coffee County sheriff's department.

A few weeks after Mr. Mclendon's murderous rampage in Alabama, there was a premeditated shooting spree in upstate New York. The gunman drove his car up to a citizenship services center in Binghamton, NY, barricaded the backdoor with his car, and then burst through the front entrance with two handguns and a bag full of ammunition. In what would become the worst mass shooting since the tragic assault at Virginia Tech, the assailant opened fire, killing one receptionist and wounding another.

He then entered a classroom where he sprayed gunfire, killing 12 more innocent people and wounding 7 others. The gunman then committed suicide. The killer was no stranger to guns. He was a firearms enthusiast and even though he had been convicted of a misdemeanor, he held a license to carry concealed weapons.

The day after the city of Binghamton was terrorized by a gunman, two police officers arrived at a house in Pittsburgh to quell a domestic conflict between a man and his mother. When the two officers entered, they were ambushed and killed. The assailant was carrying three firearms and wearing a bulletproof vest and murdered the policemen with an AK–47.

Minutes later, the gunman shot and killed a third officer who arrived at the scene. The attacker held the police at bay for 4 hours before surrendering. It was later learned the killer had been arrested for domestic abuse against his girlfriend but held a concealed weapons permit.

We have to face up to this. This amendment would let more brutal people carry concealed weapons legally—

and not just in their own town or in their own State but in other States and across State lines.

This amendment would also open the floodgates for gun trafficking. A gun dealer who sells firearms to criminals would be free to travel across the country with a car full of loaded weapons as long as the driver had a concealed weapons permit from some other State. The fact is, if the police were to discover the pile of guns in the trafficker's trunk, the police could do nothing about it.

The prospect of this scenario is no exaggeration. Last year, a report showed that one-third of firearms sold on the black market came from States with weak gun safety laws. The Thune amendment would simply exacerbate this problem and make it easier for gun traffickers to supply known criminals—including terrorists—with weapons.

The scourge of gun violence and gun deaths is a menace this Chamber must take seriously. Think about it. All of us here represent a State—all of us, two per State—and we are being told by one of our Members that what we ought to do is let the Federal Government decide how we care for our people: decide, the Federal Government, how safe our streets ought to be; decide, the Federal Government, to ignore or obviate laws we have on our books, and say: We are going to override your books. We know best what is good for you.

Well, those in other States—whether Illinois or San Francisco, CA, or Houston, TX—do not know better about what we ought to do in New Jersey than we do about them, and we should not allow this to take place.

Just look at the toll gun violence takes on our most innocent and defenseless in our country. Every single day, 8 children die because of gun violence, while another 48 kids are shot. They, however, manage to survive their gun injuries. Think about it: over 50 kids shot each and every day. It is a tragedy in America.

The Thune amendment would place our communities in danger in further danger than we already have. That is why law enforcement leaders—the very people who put their lives on the line to combat criminals and keep families safe—are against the Thune amendment. I have a letter from the International Association of Chiefs of Police opposing this amendment. As the letter explains, the police chiefs urge Congress to ''act quickly and take all necessary steps to defeat this dangerous and unacceptable legislation.'' The Association of Chiefs of Police—if anybody ought to know what is good for their communities, it should be the chiefs of police.

Madam President, I ask unanimous consent that this letter be printed in the RECORD directly following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LAUTENBERG. It is no wonder that when police departments are in charge of issuing concealed weapons permits, they are very conservative about whom they allow to have these permits. Nevertheless, the amendment from Senator THUNE would defer to the weakest—think this through—would defer to the weakest concealed permit laws. So now untrained, amateur gun owners will be free to carry a hidden firearm in other States and across State lines.

Do we want to completely disregard State law enforcement officers' decisions or do we want criminals wandering our streets with pistols in their backpacks or carrying them on their sides or do we want unstable drivers stuck in rush hour with guns in the front seats of their cars? I do not.

These are critical questions, and they should not be resolved by an amendment tacked onto a Defense authorization bill—defense. We have our soldiers, and the toll keeps rising in Afghanistan. By no means is Iraq a safe place to be. They should not have to be further jeopardized or have their health threatened. We see what conditions are like. We see the reports from the war front. This bill ought to be moved along just on the Defense authorization.

On Thursday, the Judiciary Committee is going to hold hearings on Senator THUNE's proposal. That hearing will give everyone a fair opportunity to get all the facts, hear from both sides of the issue, and learn from the testimony of experts. The hearing will include law enforcement officers testifying against this legislation. They deserve to have their voices heard. We should not shortcut the legislative process and the vital work of the Judiciary Committee.

Before I close, I wish to make one thing crystal clear: This amendment has nothing to do with individuals' rights to protect themselves in their own homes. A concealed weapons permit is a separate and special privilege that lets gun owners hide their firearms in a jacket or a bag as they travel in the community and go out in public. Whether they are riding in a bus or a car or walking down the street, they can have that weapon.

Why in our world is it necessary to make sure those who want to carry a concealed weapon can go anyplace they want with this weapon? You know what happens. We read about fights occurring in cafes all the time. To just allow people to come in there with weapons and see what happens after alcohol or too much celebration? Bad idea, and we should not allow it.

States and local communities must be allowed to choose who has earned this privilege, based on what is in the best interest of that particular State or community. Unfortunately, this amendment takes the power away from the local community, away from the State capitals, and leaves the decision about what is in the public interest to the gun lobby and the politicians here in town—lobbyists in many cases.

The Thune amendment poses extreme danger to our country, and it blatantly nullifies State laws and State rights in favor of a radical agenda. I strongly urge my colleagues to vote no on the Thune amendment.

I recently was traveling with my wife out West, and we were interested in seeing a particular baseball team play. We know the owners of the team. The hotel had a gun show.

By the way, I carried a gun. It was not concealed. I did it in a uniform during a war, and I loved that weapon. But it had a mission. It had a mission to kill somebody else before they killed me. That is not what we typically see with concealed weapons.

In this case, we were at this hotel gun show, and people were buying ammunition for their purpose. There was lots of activity. Lots of ammunition was being put in the back of cars. The State, though, in that case permitted it. There could not be any objection. The State decided what was best for its citizens and its communities, and they did just that. I do not agree with that, but I cannot object. If that State wants to do it that way, they are entitled to do it that way, and who am I, from the State of New Jersey, to tell them how they should conduct themselves in those moments? I have no right to do that.

So here we are. We are faced with an amendment that says nobody in the State knows what is better for their people than does the gun lobby, the NRA, the gun manufacturers. We disagree with that, and I hope we will show the American people we care enough about them and respect their intelligence—respect the fact they have their own structure in their States to take care of their needs as they see them. We do not want to see intruders carrying guns coming into those States—not mine, not yours, not anybody's—who do not pass the test that is required within that State's jurisdiction before they go around town with their weapons.

EXHIBIT 1

INTERNATIONAL ASSOCIATION
OF CHIEFS OF POLICE,
Alexandria, VA, July 17, 2009.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER REID: On behalf of the International Association of Chiefs of Police (IACP), I am writing to express our strong opposition to S. 845, the Respecting States Rights and Concealed Carry Reciprocity Act of 2009. This bill would weaken existing state laws by allowing an individual to carry concealed firearms when visiting another state or the District of Columbia as long as the individual was entitled to carry concealed firearms pursuant to the laws of his or her home state.

It is the IACP's belief that S. 845 would severely undermine state concealed carry licensing systems by allowing out of state visitors to carry concealed firearms even if those visitors have not met the standards for

carrying a concealed weapon in the state they are visiting. For example, some states require a person to show that they know how to use a firearm or meet minimum training standards before obtaining a concealed carry license. These states would be forced to allow out of state visitors to carry concealed weapons even if they do not meet that state's concealed licensing standards.

It is the IACP's belief that states and localities should have the right to determine who is eligible to carry firearms in their communities. It is essential that state, local and tribal governments maintain the ability to legislate concealed carry laws that best fit the needs of their communities—private citizens as well as active and former law enforcement personnel.

The IACP urges you to act quickly and take all necessary steps to defeat this dangerous and unacceptable legislation.

Thank you for your attention to this matter. Please let me know how we can be of assistance.

Sincerely,

RUSSELL B. LAINE,
President.

Mr. LAUTENBERG. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1618

Mr. THUNE. Madam President, the business pending before the Senate is the amendment I have offered to the Defense authorization bill. I think it is close to nearing an agreement with both sides about a process for proceeding to have debate on this amendment and then perhaps, hopefully, a vote sometime as early as Wednesday of this week.

I think it is important to note for the record—because many have already or some at least have come down already and spoken on this amendment—that I had hoped to offer this amendment as a second-degree amendment to the hate crimes amendment that has been on the floor now for the past week. The Defense authorization bill was brought up early last week. Immediately, this hate crimes amendment was offered. It is a nongermane amendment. It is not relevant, obviously, to the underlying content of the bill.

The Defense bill sets priorities for our national security interests for the coming year. Yet the Democratic leadership chose to make the hate crimes amendment the first amendment to be debated and voted upon. When they did that, it had been my intention to offer as a second-degree amendment the concealed carry amendment, which is now the pending amendment before the Senate. It makes sense in a lot of ways, to me, to do that simply because one of the best ways to help prevent hate crimes against potential victims of hate crimes is to allow them to defend themselves. The concealed carry permit is something most States across the country have. What my amendment simply does is it allows those who have concealed carry permits in their own States to be able to move across State lines to other States that also allow concealed carry permits. Obviously, they also have to respect the laws of those individual States if there are restrictions on the exercise of that right.

I think it is important in the debate over hate crimes to point out that the victims of those crimes ought to have at their disposal as many ways of defending themselves as is possible. Frankly, there are lots of organizations that have come out in support of this amendment for that reason, because they believe if you want to prevent those types of violent crimes, those types of hate crimes from being committed in this country, one way to do that is to allow individuals who are the potential victims of those types of crimes to be able to have a concealed carry permit in order to deter a crime from being committed.

It is also important to point out that there are a number of arguments that have been raised against this amendment which just, frankly, are not true.

First of all, my amendment does not create a national concealed carry permit system or standard. My amendment does not allow individuals to conceal and carry within States that do not allow their own citizens to do so. My amendment does not allow citizens to circumvent their home State's concealed carry permit laws. If an individual is currently prohibited from possessing a firearm under Federal law, my amendment would continue to prohibit them from doing so. When an individual with a valid concealed carry permit from their home State travels to a State that allows their citizens to conceal and carry, the visitor must comply with the restrictions of the State they are in.

It has been suggested that somehow this preempts State laws. That is not the case. The restrictions an individual State imposes upon concealed carry laws that have been enacted by that State must be followed by any individual who has a concealed carry permit in their own State. In other words, the individual who travels to that State will be required to live under the laws that are on the books in that State.

But it does get at an issue which I think many have raised regarding people who travel across State lines all the time—truckdrivers, for instance, who on any given day take a cargo load from one State across several States in this country and want to be able to protect themselves as they do so. In many cases, they stay overnight in truckstops or pull over for a nap somewhere. Being able to possess a firearm that would enable them to have some level of self-protection and to deter crimes from being committed makes a lot of sense.

So the amendment is very straightforward and very simple. It is simply tailored to allow individuals to protect themselves while at the same time respecting States rights. So individual States can continue to enact restrictions on that, and every State has those. They may be place restrictions, and I think most States—I know my State of South Dakota has restrictions regarding courthouses, schools, and those sorts of places where there are restrictions against concealed carry. Many States have those types of laws which would apply to anyone who has a concealed carry permit in their own State of residence and moves into another State that also has a concealed carry permit law. So they would have to live under the laws of those States. So I want to make very clear what the amendment does and doesn't do.

I have heard it said here that somehow this is going to be used to circumvent or to preempt State laws. That certainly is not the case. But it does get at the heart of what is a constitutional right in this country. The second amendment of the Constitution allows people to keep and bear arms. That is a constitutional right, and it should not be infringed upon. Like I said before, an individual State can enact statutes that impose restrictions on that. That is something most States have, and every State treats the situation a little differently. But an individual should be able to exercise their second amendment constitutional right and be able to travel through individual States as long as they live by the laws of those States.

So that is essentially what the amendment does. It is very simple, very straightforward, and not particularly complicated, as I said. It certainly doesn't do many of the things that have been proposed here on the floor that it does. So I thought it was important to set the record straight.

Obviously, we will have a debate about this in the next couple of days. I think we will probably have a debate on the defense amendment here first, and then we will get to this particular issue. But I hope my colleagues, as they listen to that debate, will do their best to ferret out and to differentiate facts from myth and facts from fiction because there are a lot of statements that are being made that are not consistent with the facts, and the facts on this are very clear.

So I look forward to having the opportunity to make that case and to have this issue debated. As I said before, I had hoped to be able to offer this as a second-degree amendment to the hate crimes amendment because I think it fits very nicely there. As I said before, it ties in to the overall theme of protecting potential victims from hate crimes by allowing them to have a deterrent. Obviously, a concealed carry permit acts as a deterrent and has been proven over time, both in terms of the data you look at as well as a lot of anecdotal examples, to have the desired effect, which is to prevent many of these crimes from occurring in the first place.

Because the Democratic leadership filled the tree—in other words, precluded or prevented my offering a second-degree amendment to the hate crimes amendment—we are now offering it as a first-degree amendment and understand completely the importance of moving the Defense bill forward. So I think, on Wednesday, after we have had a certain amount of time to debate, we will bring it to a vote, and I hope my colleagues would support this. I think it is an amendment that has broad bipartisan support. I already have 22 or 23 cosponsors on this amendment from both sides of the aisle, and I hope that number grows because it is common sense. It has been very effective in many States across the country.

We want to use as many tools as we can to deter crime, particularly violent crimes that are committed against individuals in this country. It seems to me it makes sense in having a concealed carry permit law that allows an individual who has a valid concealed carry permit in their individual State of residence an opportunity to move freely across this country and to have that constitutional right protected.

With that, Madam President, I yield the balance of my time and look forward in the next day or two, as this issue is debated further, to having a discussion with my colleagues here in the Senate in hopes that we can get this amendment enacted on this bill. So I hope my colleagues will vote for it when the time comes.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I just want to say how much I appreciate the Senator's efforts. It is consistent with the retired law enforcement officers bill we passed, as I recall, not long ago that allowed them to carry their weapons in other States under certain circumstances. When people are traveling, they many times feel more vulnerable and they feel a greater need to protect themselves.

I think it is a sound and reasonable approach—limited but important—and I thank Senator THUNE for offering that amendment.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, notwithstanding the order of July 16, 2009, I ask unanimous consent that the Levin-McCain F–22 amendment be considered on Tuesday, July 21, beginning immediately after the opening of the Senate on that day and extending for up to 2 hours, and the vote on the amendment occur upon the use or yielding back of time, as provided for under the previous order which established the parameters of considering the amendment, with the other provisions of the July 16 order governing consideration of the Levin-McCain F–22 amendment remaining in effect; further, that on Wednesday, July 22, at 9:30 a.m., after opening of the Senate, the Senate then resume consideration of S. 1390 and the Thune amendment No. 1618, with the time until 12 noon for debate with respect to amendment No. 1618, and the time equally divided and controlled between Senators THUNE and DURBIN or their designees, with no amendments in order to the Thune amendment during its pendency; that adoption of the Thune amendment requires an affirmative 60-vote threshold; further, that if the amendment achieves that threshold, then it be agreed to and the motion to reconsider be laid upon the table; that if it does not achieve that threshold, then it be withdrawn; that at 12 noon, the Senate proceed to vote in relation to the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, for the information of the Senate, on Tuesday the Senate will convene at 10 a.m.; therefore, the vote on the Levin-McCain amendment is expected to occur around 12 noon. That is expected to be the first vote of the day.

Mr. SESSIONS. Madam President, we have been busy in the Judiciary Committee with the Sotomayor hearing. I have not been able to participate in the debate over the hate crimes legislation. I want to follow up a little bit more on what I said earlier today. I have an obligation to assert a principle that I think is important in Federal criminal law.

I was a Federal prosecutor for 15 years and was very familiar with the jurisdiction issues that are involved in Federal criminal law. We need to do this right. I do not think we have done that right.

The bill has basically been made a part of this Defense bill already, so in one sense I guess the die is cast, but I will share a few thoughts.

To repeat briefly, I will quote from the letter from six, I believe, of the eight members of the U.S. Commission on Civil Rights that was received June 16, was sent to the President and members of the Judiciary Committee. They said:

We believe the MSHCPA—

That is the so-called hate crimes legislation, this is their opinion, six of the eight members—

will do little good and a great deal of harm. Provisions in the bill ''are very much a violation of the spirit that drove the framers of the Bill of Rights, who never dreamed that federal criminal jurisdiction would be expanded to the point where an astonishing proportion of crimes are now both state and federal offenses. We regard the broad federalization of crime as a menace to civil liberties. There is no better place to draw the line on that process than with a bill that purports to protect civil rights.

In other words, this is an official commission of the U.S. Government, appointed by Presidents, and that is what they sent to us.

Gail Heriot, who is a member of the commission, testified at our judiciary hearing a couple of weeks ago. She testified that:

The proposed hate crimes legislation, which is being touted as a response to murders, should not have been treated as a mere photo opportunity. It is real legislation with real world consequences—and not all of them are good. A close examination of its consequences, especially its consequences for federalism and double jeopardy protections, is therefore in order.

Given the many civil liberties issues that would raise, including the routine potential for double jeopardy prosecutions, this is a step that members of the Senate should think twice before they take.

Bob Knight, a senior fellow—I guess I am going to show some members, liberal lawyers and conservative advocates, also sharing concern over this legislation. I hope my colleagues have not treated these concerns too lightly.

It is hard to vote against legislation that purports to fight hate. You do not want to be somebody defending hate crimes. I certainly do not. Neither do these good people who have expressed their concern.

Bob Knight, a senior fellow at the American Civil Rights Union, said this:

The proposed law, whatever its sponsors' good intentions, is a grave threat to the constitutional guarantee of equal protection under the law. America's legal heritage of judging actions rather than thoughts or beliefs, and it will politicize law enforcement by making some crime victims' cases more important than others.

Beyond the obvious unfairness of excluding some groups from enhanced protections, such as the elderly, homeless, veterans and children—

They are not given enhanced protections of the hate crimes bill—

the proposed law advances an underlying ambitious agenda to punish individuals and groups that hold traditional values.

This law:

. . . lays the groundwork for the concept of ''thought crime,'' in which someone's views or beliefs are criminalized. Violent acts are already illegal and punished under criminal law. This law adds penalties based on thought. In order to prove that the defendant holds particular beliefs that motivated a criminal act, his or her speech, writing, reading materials and organizational memberships would become key evidence.

Brian Walsh, a senior fellow at the conservative Heritage Foundation, says this:

The criminal justice system is in great need of principled reform . . . this reform should not be driven by some partisan politics. Unfortunately, the HCPA fails to measure up to this standard and would substantially undermine constitutional federalism and the high regard in which the American public should hold Federal criminal law.

The three main problems with this amendment are that:

. . . the Act's new ''hate crimes'' offenses are far broader and more amorphous than any properly defined criminal offense should be—

I agree with that, parenthetically. He goes on to say:

—and they thus invite prosecutorial abuse, politically motivated prosecutions, and related injustices. The Act's ''hate crimes'' offenses violate constitutional federalism by asserting Federal law-enforcement power to police truly local conduct over which the Constitution has reserved sole authority to the 50 states. The Act's ''hate crimes'' offenses would be counterproductive, for nearly all States have—tough ''hate crimes'' laws

and the violent conduct underlying the Act's ''hate crimes'' offenses has always been criminalized in all 50 states.

Nat Hentoff is a famous civil rights and libertarian attorney, a writer well known in the country as being a passionate advocate for civil liberties from an objective, I would say, point of view. He has respect from both conservatives and liberals, but I guess his background has mostly been on a more liberal approach to law.

He starts off saying:

Why is the press remaining mostly silent about the so-called ''hate crimes law'' that passed the House on April 29? The Local Law Enforcement Hate Crime Prevention Act passed in a 249–175 vote—17 Republicans joined with 231 Democrats. These Democrats should have been tested on their knowledge of the First Amendment, equal protection of the laws . . . and the prohibition of double jeopardy. . . . No American can be prosecuted twice for the same crime or offense. If they had been, they would have known that this proposal, now headed for a Senate vote—violates all these constitutional provisions.

This bill would make it a federal crime to willfully cause bodily injury—or try to—because of the victim's actual or perceived ''race, color, religion, national origin, gender, sexual orientation, gender identity or disability''—as explained on the White House Web Site, signaling the president's approval. A defendant convicted on these grounds would be charged with a ''hate crime'' in addition to the original crime and would get extra prison time.

The extra punishment applies only to these ''protected classes.''

He quotes a Denver, CO criminal defense lawyer:

As Denver criminal defense lawyer Robert J. Corry Jr. asked . . . ''Isn't every criminal act that harms a person a hate crime?'' Then, regarding a Colorado ''hate crime'' law, one of 45 such state laws, Corry wrote:

''When a Colorado gang engaged in an initiation ritual specifically seeking out a 'white woman' to rape, the Boulder prosecutor declined to pursue ''hate crime'' charges. She was not enough of one of its protected classes.''

Corry adds that the State ''hate crime'' law—like the newly expanded House of Representatives Federal bill—''does not apply equally,'' as the 14th amendment requires, essentially instead:

''Criminalizing only politically incorrect thoughts directed against politically incorrect victim categories.''

Hentoff concluded:

Whether you're Republican or Democrat, think hard about what Corry adds:

''A government powerful enough to pick and choose which thoughts to prosecute is a government too powerful.''

David Rittgers of the CATO Institute, a libertarian group, said this:

The Federal hate crimes being considered in the Senate undermines the rule of law and shows casual disregard, if not outright hostility, for the principles of limited government and equality under the law. The bill Federalizes violent acts against victims by reason of their actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability.

Never mind that these acts are already prosecuted by the states—45 of which have their own hate crime laws—and that violent crimes of this nature are universally perceived as an affront to justice. Matthew Shepard, a gay man brutally killed in Wyoming, has provided one of the rallying cries for passage of this legislation. His killers both received two consecutive life sentences from a state court. James Byrd, Jr., the African-American man dragged to death behind a truck in Texas, is cited as another reason to pass the law. His killers received death sentences or life imprisonment.

The federal government would also be authorized to prosecute whenever ''the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-related violence.'' While this doesn't violate the letter of the Supreme Court's double jeopardy jurisprudence—the federal and state governments are considered separate sovereigns—it certainly violates its spirit.

The National Religious Broadcasters write they are opposed to the concept as well as the current legislative permutations of the so-called ''hate crimes.'' This legislation takes any conduct that is viewed as a threat to homosexuals or bisexuals or a threat to persons who want to immunize their religion from public debate and turns that threat or perceived threat into a species of criminal felony. As a consequence, this legislation will inevitably stifle the free exercise of religion and freedom of speech, and brings with it the very real likelihood of abusive prosecutions. Federal ''hate crimes'' laws also ignore the fact that the underlying core offense, the causing of bodily injury to another, is already criminalized in all 50 states.

The Research Council says this:

Hate crimes laws force the courts to guess the thoughts and beliefs which lie behind a crime, instead of looking at the crime itself.

The Family Research Council believes that all crimes should be prosecuted to the fullest extent of the law, and that every violent crime has some form of hate behind it. All around the country, crimes are being prosecuted in the State justice systems. American justice is being done. There is simply no need for a Federal hate crimes law.

Violent attacks upon people or property are already illegal, regardless of the motive behind them. With hate crime laws, however, people are essentially given one penalty for the action they engage in and an additional penalty for the particular and highly selective attitudes and thoughts that motivated these actions.

Motive-based analysis and intent-based analysis are not the same thing. For example, with the crime of manslaughter, intent-based analysis looks at whether the perpetrator intended the result. Hate crime legislation takes into account what the offender thinks, feels, or believes about the victim regardless of whether the perpetrator intended the result. This is why hate crimes may be referred to as ''thought crimes.''

The Traditional Values Coalition says:

The so-called hate crimes bill will be used to lay the legal foundation and framework to investigate and prosecute and persecute pastors, business owners, Bible teachers, Sunday School teachers, youth leaders, Christian counselors, religious broadcasters, and anyone else whose actions are based upon and reflect the truths found in the Bible, which have been protected by the first amendment.

That is not accurate? Well, they are concerned about that. And they object to the legislation.

The Concerned Women for America note that:

The legislation would violate genuine constitutional rights in an attempt to address a nonissue, create a caste system of victims, violate the spirit of the Double Jeopardy Clause of the Constitution, and unintentionally extend privileges to individuals who engage in illegal sexual acts even against children.

I would share those thoughts and say that this is why this legislation has been controversial. The predicate for this legislation is the interstate commerce tag that is very weak. The Supreme Court has already found several Federal statues do not have sufficient interstate nexus to justify prosecuting a crime in Federal court.

I would say if a few people walk out in the pasture and one finds a rock and murders a person, as a Federal prosecutor for 15 years I will tell you, there is no jurisdiction federally to try and prosecute that case. It is a criminal case in the State court only. And to make it a Federal case, you have to have some sort of peg to hang your hat on, so to speak.

In that case, I do not think there is any. But if you are on a railroad train and you are traveling and you are in interstate commerce, you murder someone, that can be a Federal crime. If you steal from an interstate shipment, that can be a Federal crime. If you murder a postman, that is a Federal crime—or a Federal civil servant, and so forth. Those are Federal crimes. But normal murder, rape, robbery, theft, that occur by the tens of thousands every day all over America are not Federal crimes. They are not prosecutable in Federal court.

The very small number of FBI agents, compared to the massive numbers of police and sheriffs, deputies, and State law enforcement officers is such that there is no way they can ever begin to prosecute or investigate these crimes. They have to focus on those crimes that are uniquely Federal, vindicate a uniquely Federal interest.

With regard to the Civil Rights Act that was passed in the 1960s, it has some similarities, although it is more tightly written.

I will conclude with these thoughts: There was a demonstrable record of failure to prosecute violations of civil rights against African Americans in the South, sad to say, and in other places in this country. It appeared that local law enforcement was ineffective, sometimes unwilling, to vindicate those rights, and so the Civil Rights Act said: If you are going to school or a legal activity at the city or county or Federal Government or voting and you are interfered with, that can be a Federal offense.

There was a clear record to justify the need for Federal involvement in those cases. And most of those cases, I think virtually all, have been upheld as being sufficiently tied to interstate commerce to be a legitimate Federal crime to prosecute.

We asked the Attorney General at a hearing recently, can he name any cases? He did not name a single one. But he said in his statement there were four. After the hearing we submitted questions to the Attorney General: Did he have any cases to show that these prosecutions are not being effectively prosecuted locally?

He stood by the four. That is all we ever got over a period, I think, of 5 years. At least that is what I asked him for. And the four cases were very insubstantial. In each one of the four cases prosecutions were initiated. I think in all but one convictions were obtained.

Some people were not happy with the results of the case, and they would have liked the Federal Government to take it over and prosecute it again. But as I said, there are tens of thousands of cases prosecuted every day, and many victims in those cases felt that the outcome of the case was not sufficient. They would like also for the Federal Government to prosecute it again. But they might not have been in these ''special classes'' that got this ''special benefit'' in this bill.

Do you see then what it is all about? It is basically saying that the Federal Government sits up and hovers above the criminal justice system, and it can decide whenever, based on the length of the chancellor's foot, I suppose, when a case has not effectively resulted in justice.

They said in their answer, they want to make sure that there is justice every time. That is a pretty high goal, I have got to tell you, especially when people might not agree. Juries make decisions. I hope we in this Congress will understand the huge responsibility we have to the historic concept that crimes of a local nature should be prosecuted locally, and that the Federal Government does not need to be involved in everything to try to ensure perfect justice.

Indeed, it is not involved in every case and it never has been. It should not be. I wanted to make these quotes a part of the RECORD, and call on the Members of the Senate as we go forward in the future to make sure that the legislation we pass is consistent with our heritage, which understands that the Federal Government does not have a general criminal power, has only narrow limited enumerated power to make crimes Federal, and we ought not overreach and create a situation in which, according to the U.S. Civil Rights Commission in their letter to us: Every single rape would be a Federal crime because the action would have been carried out as a result of the gender of the person being assaulted.

Ms. Heriot said she had talked with the Department of Justice in previous years about this, before she was on the Commission, and they refused to narrow the language because they wanted that broader language.

I think that is too broad. This bill is too amorphous and too broad and should not become law.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HAGAN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

Mrs. HAGAN. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mrs. HAGAN pertaining to the introduction of S. 1473 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. LEAHY. Mr. President, it reflects well upon this body that the Senate late last week voted to include the Matthew Shepard Hate Crimes Prevention Act of 2009 as an amendment to the Defense authorization bill with a strong bipartisan vote. This important legislation has also passed the Senate in 2007, 2004, 2000, and 1999. I am hopeful and optimistic that this time it will make it to the President's desk and be signed into law.

This legislation will help to address the serious and growing problem of hate crimes. The recent tragic events at the Holocaust Museum, on top of many other recent hateful and devastating acts, have made clear that these vicious crimes continue to haunt our country. This bipartisan bill is carefully designed to help law enforcement most effectively respond to this problem. It has been stalled for far too long. The Senate's action last week was the right step and long overdue.

I thank Senator COLLINS, Senator SNOWE, and the other bipartisan cosponsors for their support. I particularly thank Senator TED KENNEDY, for whom this important civil rights measure has long been a priority, and I commend him for his steadfast leadership over the last decade in working to expand our Federal hate crimes laws.

I wish he could have been here for the vote on Thursday, but I know he was proud of what the Senate did. I thank the many staff members who helped with this effort—Roscoe Jones, Joe Thomas, Elise Burditt, Leila George-Wheeler, Matt Smith, Noah Bookbinder, Kristine Lucius, and Bruce Cohen on my staff—as well as the staff for Senator KENNEDY—Christine Leonard and Ty Cobb—who worked so hard on this legislation.

I appreciate that Republicans were willing to come to an agreement to let this hate crimes amendment move forward. As part of that agreement, today we vote on several additional related amendments from Senator SESSIONS.

Senator SESSIONS proposed an amendment creating a new criminal statute for attacks against U.S. servicemembers. While servicemembers are already appropriately covered by strong legal protections, I agree with the purpose of this amendment, and I appreciate Senator SESSIONS' willingness to work with us to improve it. I will support this amendment.

Senator SESSIONS was also willing to work with us on another amendment of his which would require that all hate crimes prosecutions be undertaken pursuant to guidelines promulgated by the Attorney General. With the improvements that we worked out, I am happy to support this amendment as well.

Finally, Senator SESSIONS proposed an amendment to apply the death penalty to a broad swath of hate crimes. This amendment, as offered, would have applied the death penalty even to cases involving offenses like attempted kidnapping where there was no intent to kill any person. Such a broad application would have clearly violated the Constitution as set out in ruling Supreme Court precedent.

With regard to the death penalty, the Supreme Court recently held that, ''As it relates to crimes against individuals, . . . the death penalty should not be expanded to instances where the victim's life was not taken.''

Whether or not Senators agree with that sentiment, we should not purposefully pass legislation that we know to be unconstitutional. As a result of my criticism, I understand that Senator SESSIONS will be modifying his amendment, and I appreciate that.

Adding an expansive death penalty provision to hate crime statutes would also add new costs to enforcement since death penalty cases are consistently far more expensive and difficult for the government to litigate. Those increased costs could reduce the number of important hate crime investigations and prosecutions the government could conduct.

We should be facilitating more hate crime investigations and prosecutions, not restricting the number the government can bring. I should also note that many proponents of hate crimes legislation, particularly in the House, as well as other influential House Members, strongly oppose the death penalty.

The Leadership Conference on Civil Rights has written us to oppose this death penalty amendment, and I know several of my fellow Senators share my concerns with this amendment.

Senator KENNEDY has proposed a further amendment which would add important guidelines about when the death penalty could be used. I support this commonsense measure.

I hope all Senators will join me in doing everything we can to ensure that effective, meaningful hate crimes legislation can be signed into law this summer.

Mr. NELSON of Nebraska. Mr. President, I come to the floor to express my disappointment that the Senate failed to take advantage of an opportunity to debunk a false argument against the Matthew Shephard Hate Crimes Prevention Act. If it were up to me, the debate never would have gone in this direction, but since it has I have tried to do my best to address the concern—though I believe it to be unfounded—that this legislation protects ''pedophiles.''

Some, including some constituents of mine in Nebraska, are concerned that a term used in this legislation, ''sexual orientation,'' could be interpreted as including ''pedophiles.'' This is obviously not the intent of the bill, nor is it possible that any of the categories protected by the bill could be read to include pedophiles. In short, nothing in this legislation is intended, nor can it be construed, to protect pedophiles.

The Attorney General, the chief law enforcement officer in the United States, has rejected the argument that this bill covers pedophiles. In fact, the ranking member of the Judiciary Committee, Senator SESSIONS, explicitly asked Attorney General Eric E. Holder a question for the record of the Judiciary Committee's hearing on this bill, which makes clear that the bill, as written, could not possibly be read to include pedophiles. As the Attorney General stated:

Proposed U.S.C. § 249(a)(2) would cover violent crimes motivated by bias against the ''actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person.'' This legislation would only cover groups falling under these categories. The Department [of Justice] does not believe that any group falling under these categories should be excluded. The Department does not believe that any of the listed categories could possibly be read to include pedophiles, and therefore we do not believe an amendment to exclude pedophiles is necessary.

Despite this assurance, my colleague from South Carolina offered just such an amendment, and I signed on as a cosponsor to express sensitivity to the concern he raises, even though I do not believe this legislation protects pedophiles in any way.

Existing Federal law, codified at 28 U.S.C § 534 defines sexual orientation as consensual homosexuality or heterosexuality. A similar definition can be found in any dictionary of the English language. That and nothing more is what we are addressing in this bill.

I might add that in my view to claim that this law could somehow be used to protect pedophiles shows a lack of confidence in and respect for local law enforcement, and the groups, such as the International Association of Chiefs of Police, the National Sheriffs Association, and the National District Attorneys Association, which are strongly supporting this bill and asking us to pass this legislation to help them do their jobs in investigating and prosecuting these heinous crimes.

In order for the hate crimes law to be used in the manner some groups claim it could, a chief of police or local sheriff would have to decide, in conjunction with the county attorney or district attorney, that it was in their best interest and the best interest of the community to bring such a prosecution, in contravention of existing Federal laws that protect children from predators. Federal law enforcement, which serves as a backstop to local efforts under this bill, would also not use the law in this way because the Department of Justice has already stated their policy that this legislation does not protect pedophiles. As I quoted above, the Attorney General, the Nation's top law enforcement official, made the Department's policy crystal clear in Congressional testimony: ''the Department does not believe that any of the listed categories could possibly be read to include pedophiles.''

We can have an honest debate about this bill. I have heard several arguments of reasons why this bill should be opposed, and I appreciate and respect the concerns which underlie those arguments. However, I feel the need to reaffirm that in no way is this bill intended to, or can be construed as, protecting pedophiles.

Mr. REID. Mr. President, I ask unanimous consent that the July 15, 2009, letter from Attorney General Holder to Senator MCCONNELL and myself be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, July 15, 2009.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR SENATORS REID AND MCCONNELL: I understand that S. 909, the Matthew Shepard Hate Crimes Prevention Act, is now before the Senate in the form of an amendment to pending legislation. On behalf of the Administration, I strongly urge the Senate to approve this vital legislation.

As I stated in testimony before the Senate Judiciary Committee on June 25, hate crimes victimize not only individuals, but entire communities. Perpetrators of hate crimes seek to deny the humanity we all share, regardless of the color of our skin, the God to whom we pray, or whom we choose to love.

Bias-motivated acts of violence divide our communities, intimidate our most vulnerable citizens, and damage our collective spirit. The FBI reported 7,624 hate crime incidents in 2007, the latest year for which the FBI has compiled such data. Recent numbers also suggest that hate crimes against certain groups, such as individuals of Hispanic national origin, are on the rise. Between 1998 and 2007, more than 77,000 hate crime incidents were reported to the FBI. That is nearly one hate crime every hour of every day over the span of a decade.

Most hate crimes in the United States are investigated and prosecuted by our partners in state, local, and tribal law enforcement, and this legislation will not change that reality. Rather, this bill will give law enforcement authorities at all levels the tools they need to effectively investigate, prosecute and deter bias-motivated violence. First, it will enable the Department of Justice to provide our non-federal partners with technical, forensic, prosecutorial, and financial assistance to bolster their hate crimes enforcement efforts. Second, it will eliminate the antiquated and burdensome requirement under existing Federal law that prosecutors prove that a hate crime was motivated by a victim's participation in one of six enumerated federally protected activities. Third, it will expand coverage beyond violent acts motivated by actual or perceived race, color, religion, or national origin to those motivated by actual or perceived gender, disability, sexual orientation and gender identity.

Although local law enforcement agencies will continue to play the primary role in the investigation and prosecution of hate crimes, federal jurisdiction is a necessary backstop. Federal resources may be better suited to address crimes involving multiple jurisdictions, and there may be times when local authorities request Federal involvement.

There also may be rare circumstances in which local officials are unable or unwilling to bring appropriate charges, or when prosecutions, even when successful, do not fully serve the interests of justice. At the same time, there are safeguards, both in the legislation and in the Department's internal policies, to ensure that crimes will be prosecuted at the Federal level only when necessary to achieve justice in a particular case.

Some have raised concerns that Congress lacks the constitutional authority to enact this legislation, as well as concerns that it could infringe on First Amendment rights. The Department addressed these issues at length in a June 23, 2009, views letter to Senator Edward Kennedy. As we explain in that letter, the legislation is constitutional and would not infringe on First Amendment rights because it would criminalize no speech or association, but only bias-motivated violent acts resulting in bodily injury (or attempts to commit such violent acts). Finally, the legislation is carefully tailored to address violence targeting members of communities that have suffered a long history of bias and prejudice.

This Administration strongly supports S. 909, the Matthew Shepard Hate Crimes Prevention Act, and I urge its passage without further delay. Now is the time to provide justice to victims of bias-motivated violence and to redouble our efforts to protect our communities from heinous acts of violence based on bigotry and prejudice.

Sincerely,

ERIC H. HOLDER, Jr.,
Attorney General.

Mrs. HAGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. HAGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mrs. HAGAN. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.